

HB 541

2011

1                   A bill to be entitled  
2     An act relating to paternity; amending s. 39.001, F.S.;  
3     providing purposes of provisions relating to paternity;  
4     amending s. 39.01, F.S.; adding and revising definitions;  
5     amending s. 39.502, F.S.; providing for service of a  
6     notice of the petition for dependency; specifying  
7     requirements for such notice; specifying conditions under  
8     which an unmarried biological father may not contest the  
9     petition for dependency or any subsequent petition for  
10    termination of parental rights, unless a court orders  
11    otherwise; eliminating the defense of lack of notice for  
12    such fathers who are not identified after specified  
13    inquiry; amending s. 39.503, F.S.; revising requirements  
14    for an inquiry to be conducted when the identity or  
15    location of a parent is unknown and a petition for  
16    dependency or shelter is filed; providing that a  
17    prospective parent may file a sworn affidavit of  
18    parenthood only when the child does not have two legally  
19    recognized parents; providing for a prospective parent to  
20    seek to establish paternity in such circumstances;  
21    deleting provisions relating to the effect of a  
22    prospective parent's filing of an affidavit of parenthood  
23    while the child is a dependent child in certain  
24    circumstances; providing for a request to establish  
25    paternity and substitute parental rights when no parent  
26    objects; providing for scientific testing in certain  
27    circumstances; amending s. 39.801, F.S.; providing for  
28    service of notice of a petition for termination of

HB 541

2011

parental rights on any known and locatable unmarried biological father; specifying conditions under which an unmarried biological father shall be precluded from contesting the petition for termination of parental rights, unless a court orders otherwise; eliminating the defense of lack of notice for such fathers who are not identified after specified inquiry; amending s. 39.803, F.S.; revising the requirements for an inquiry to be conducted when the identity or location of a parent is unknown and a petition for termination of parental rights is filed; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraphs (o), (p), and (q) are added to subsection (1) of section 39.001, Florida Statutes, to read:

39.001 Purposes and intent; personnel standards and screening.—

(1) PURPOSES OF CHAPTER.—The purposes of this chapter are:

(o) To ensure that children have the benefit of loving and caring relationships with both of their parents and with both maternal and paternal relatives, whenever possible. To that end, parents shall be engaged to the fullest extent possible in the lives of their children, and prospective parents shall be afforded a prompt, full, and fair opportunity to establish parenthood and to assume all parental duties. However, a prospective parent who is an unmarried biological father, as defined in s. 63.032, shall have no greater rights under this

chapter than he would have under chapter 63. Accordingly, his interest is inchoate until such time as he demonstrates a timely and full commitment to the responsibilities of parenthood. Because time is of the essence under this chapter and time limitations are to benefit the child, the parents or any prospective parents, including unmarried biological parents, must be aware that failure to comply with the specific requirements of this chapter may result in permanent elimination or termination of their rights or interests as parents or prospective parents, whether actual or inchoate.

(p) To ensure that each child's opportunity for a permanent, loving, and stable family is protected under the law by recognizing that each child has only two legally recognized parents entitled to the rights and responsibilities of parenthood. If a third person seeks parental rights to the child claiming a biological connection to the child, that person must act expeditiously within the timeframes established by this chapter to assert and establish his or her parental rights.

(q) To ensure that 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. For this reason, the state has a compelling interest in requiring an unmarried 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.

Section 2. Subsection (49) of section 39.01, Florida Statutes, is amended, subsection (76) of that section is

HB 541

2011

85 redesignated as subsection (77), and a new subsection (76) is  
86 added to that section, to read:

87       39.01 Definitions.—When used in this chapter, unless the  
88 context otherwise requires:

89       (49) "Parent" means a woman who gives birth to a child and  
90 a man who was married to the mother at the time of the child's  
91 conception or birth, who has legally adopted the child, who was  
92 adjudicated by the court to be the father of the child by the  
93 date of an advisory hearing held on a petition for termination  
94 of parental rights, or who has filed an affidavit of paternity  
95 pursuant to s. 382.013(2)(c) by the date that an advisory  
96 hearing is held on a petition for termination of parental rights  
97 ~~whose consent to the adoption of the child would be required~~  
98 ~~under s. 63.062(1).~~ If a child has been legally adopted, the  
99 term "parent" means the adoptive mother or father of the child.  
100 The term does not include an individual whose parental  
101 relationship to the child has been legally terminated, or an  
102 alleged or prospective parent, unless the parental status falls  
103 within the terms of s. 39.503(1) or s. 63.062(1). For purposes  
104 of this chapter only, when the phrase "parent or legal  
105 custodian" is used, it refers to rights or responsibilities of  
106 the parent and, only if there is no living parent with intact  
107 parental rights, to the rights or responsibilities of the legal  
108 custodian who has assumed the role of the parent.

109       (76) "Unmarried biological father" means the child's  
110 biological father who is not married to the child's mother at  
111 the time of conception or birth of the child and who, before the  
112 advisory hearing is held on a petition to terminate parental

HB 541

2011

113 rights, has not been adjudicated or declared by a court of  
114 competent jurisdiction to be the legal father of the child or  
115 has not executed an affidavit of paternity pursuant to s.  
116 382.013(2)(c). There can be no unmarried biological father if  
117 the mother is married at the time of conception or birth of the  
118 child, unless otherwise ordered by the dependency court.

119 Section 3. Subsection (6) of section 39.502, Florida  
120 Statutes, is amended to read:

121 39.502 Notice, process, and service.—

122 (6)(a) It is the duty of the petitioner or moving party to  
123 notify all participants and parties known to the petitioner or  
124 moving party of all hearings subsequent to the initial hearing  
125 unless notice is contained in prior court orders and these  
126 orders were provided to the participant or party. Proof of  
127 notice or provision of orders may be provided by certified mail  
128 with a signed return receipt.

129 (b) Notice of the petition for dependency shall be  
130 individually served upon any known and locatable unmarried  
131 biological father who is identified under oath before the court  
132 or who is identified by a diligent search of the Florida  
133 Putative Father Registry. Service of the notice of the petition  
134 for dependency is not required if the unmarried biological  
135 father signs an affidavit of nonpaternity or a consent to  
136 termination of his parental rights and the affidavit or consent  
137 is accepted by the department. The recipient of the notice may  
138 waive service of process by executing a waiver and acknowledging  
139 receipt of the notice. The notice of petition for dependency  
140 must specifically state that if the unmarried biological father

HB 541

2011

141 desires to contest the dependency petition and assert his  
142 parental rights, he must, within 30 days after service:

143 1. File a claim of paternity with the Florida Putative  
144 Father Registry maintained by the Office of Vital Statistics.

145 2. Legally establish his rights to the child pursuant to  
146 this chapter.

147 3. File a verified response with the court which contains  
148 a pledge of commitment to the child, a request for the court to  
149 calculate and order child support, and an agreement to submit to  
150 the court jurisdiction.

151 4. Provide support for the child as calculated by the  
152 court under s. 61.30.

153 5. Establish a substantial relationship with the child  
154 within the parameters established by court order. A father must  
155 develop a substantial relationship with the child by taking some  
156 measure of responsibility for the child and the child's future,  
157 and by demonstrating a full commitment to the responsibility of  
158 parenthood by providing financial support to the child in  
159 accordance with his ability, if not prevented from doing so by  
160 the person or authorized agency having lawful custody of the  
161 child, and either:

162 a. Regularly visit the child at least monthly, when  
163 physically and financially able to do so and when not prevented  
164 from doing so by the person or authorized agency having lawful  
165 custody of the child; or

166 b. Maintain regular communication with the child or with  
167 the person or agency having the care or custody of the child,  
168 when physically or financially unable to visit the child or when

HB 541

2011

169 not prevented from doing so by the person or authorized agency  
170 having lawful custody of the child.

171 (c) If the unmarried biological father fails to:

172 1. Timely and properly file a verified response with the  
173 court which contains a pledge of commitment to the child;

174 2. File a claim of paternity with the Florida Putative  
175 Father Registry maintained by the Office of Vital Statistics;

176 3. Legally establish his paternity to the child; or

177 4. Provide support for the child in an amount to be  
178 determined under s. 61.30,

179  
180 the unmarried biological father shall be precluded from  
181 contesting the petition for dependency or any subsequent  
182 petition for termination of parental rights, unless otherwise  
183 ordered by the court. The unmarried biological father is not  
184 entitled to any further notice of any proceedings regarding the  
185 child, unless otherwise ordered by the court.

186 (d) If an unmarried biological father is not identified  
187 pursuant to the court inquiry in this subsection, the unmarried  
188 biological father's claim that he did not receive actual notice  
189 of the dependency proceeding is not a defense to a finding that  
190 the child is dependent.

191 Section 4. Subsections (1) and (8) of section 39.503,  
192 Florida Statutes, are amended to read:

193 39.503 Identity or location of parent unknown; special  
194 procedures.—

195 (1) If the identity or location of a parent is unknown and  
196 a petition for dependency or shelter is filed, the court shall

HB 541

2011

197 conduct the following inquiry of the parent or legal custodian  
198 who is available, or, if no parent or legal custodian is  
199 available, of any relative or custodian of the child who is  
200 present at the hearing and likely to have the information:

201 (a) Regarding the identity of any man to whom the mother  
202 of the child was married at any time when conception of the  
203 child may have occurred or at the time of the birth of the  
204 child.

205 (b) Regarding the identity of any man who has filed an  
206 affidavit of paternity pursuant to s. 382.013(2)(c) before an  
207 advisory hearing is held on a petition for termination of  
208 parental rights.

209 (c) Regarding the identity of any man who has adopted the  
210 child.

211 (d) Regarding the identity of any man who has been  
212 adjudicated by a court as the father of the child before an  
213 advisory hearing is held on a petition for termination of  
214 parental rights.

215 (e) Regarding the identity of any man whom the mother  
216 identified as the father under oath to a representative of the  
217 department.

218 ~~(a) Whether the mother of the child was married at the~~  
219 ~~probable time of conception of the child or at the time of birth~~  
220 ~~of the child.~~

221 ~~(f)(b)~~ Whether the mother was cohabiting with a male at  
222 the probable time of conception of the child.

223 ~~(g)(c)~~ Whether the mother has received payments or  
224 promises of support with respect to the child or because of her



HB 541

2011

pregnancy from a man who claims to be the father.

(h)~~(d)~~ Whether 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.

(i)~~(e)~~ Whether 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~~7~~, or in which the child has resided or resides.

(8) (a) 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 may file a sworn affidavit of parenthood only when the child does not have two legally recognized parents. If a child has two legally recognized parents, the prospective parent must seek to establish paternity under chapter 742 and substitute the prospective parent's rights for the rights of the other parent. The dependency court may consider the petition to establish paternity under chapter 742 as part of the dependency proceedings, including entry of an order or judgment establishing paternity. ~~A prospective parent who files a sworn affidavit of parenthood 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 shall be considered a parent for all purposes under this section unless the other parent contests the determination of parenthood. If the known parent contests the recognition of the prospective parent as a parent, the~~

HB 541

2011

~~prospective parent shall not be recognized as a parent until  
proceedings under chapter 742 have been concluded. However, the  
prospective parent shall continue to receive notice of hearings  
as a participant pending results of the chapter 742 proceedings.~~

(b) If neither parent objects, the court may enter an  
agreed order substituting the prospective parent's rights to the  
child for the right of the legally recognized parent, order the  
Office of Vital Statistics to amend the child's birth record,  
and order the petitioning parent to pay support for the child.  
If either parent objects to the substitution of parental rights,  
the prospective parent shall proceed to litigate parental rights  
pursuant to chapter 742. The dependency court may consider the  
petition to establish paternity under chapter 742 as part of the  
dependency proceedings, including entry of an order or judgment  
establishing paternity.

(c) If the prospective parent does not file a sworn  
affidavit of parenthood or if the other parent contests the  
determination of parenthood, the court may, after considering  
the best interest of the child, order scientific testing to  
determine the maternity or paternity of the child. Test results  
are admissible in evidence and shall be weighed along with other  
evidence of the maternity or paternity of the alleged mother or  
father, unless the statistical probability of maternity or  
paternity equals or exceeds 95 percent. A statistical  
probability of maternity or paternity of 95 percent or more  
creates a rebuttable presumption, as provided in s. 90.304, that  
the alleged mother or father is the biological mother or father  
of the child. If a party fails to rebut the presumption of

HB 541

2011

maternity or paternity which arose from the statistical probability of maternity or paternity of 95 percent or more, the court may enter a summary judgment of maternity or paternity. If the test results show the alleged mother or father cannot be the biological mother or father, the prospective parent shall no longer be entitled to notice of the proceedings. The court shall assess the cost of the scientific testing as a cost of litigation.

Section 5. Subsection (3) of section 39.801, Florida Statutes, is amended to read:

39.801 Procedures and jurisdiction; notice; service of process.—

(3) Before the court may terminate parental rights, in addition to the other requirements set forth in this part, the following requirements must be met:

(a) Notice of the date, time, and place of the advisory hearing for the petition to terminate parental rights and a copy of the petition must be personally served upon the following persons, specifically notifying them that a petition has been filed:

1. The parents of the child.
2. The legal custodians of the child.
3. If the parents who would be entitled to notice are dead or unknown, a living relative of the child, unless upon diligent search and inquiry no such relative can be found.
4. Any person who has physical custody of the child.
5. Any grandparent entitled to priority for adoption under s. 63.0425.

HB 541

2011

309           6. Any prospective parent who has been identified under s.  
310 39.503 or s. 39.803.

311           7. The guardian ad litem for the child or the  
312 representative of the guardian ad litem program, if the program  
313 has been appointed.

314  
315 The document containing the notice to respond or appear must  
316 contain, in type at least as large as the type in the balance of  
317 the document, the following or substantially similar language:

318 "FAILURE TO PERSONALLY APPEAR AT THIS ADVISORY HEARING  
319 CONSTITUTES CONSENT TO THE TERMINATION OF PARENTAL RIGHTS OF  
320 THIS CHILD (OR CHILDREN). IF YOU FAIL TO APPEAR ON THE DATE AND  
321 TIME SPECIFIED, YOU MAY LOSE ALL LEGAL RIGHTS AS A PARENT TO THE  
322 CHILD OR CHILDREN NAMED IN THE PETITION ATTACHED TO THIS  
323 NOTICE."

324           (b) Notice of the petition for termination of parental  
325 rights shall be individually served upon any known and locatable  
326 unmarried biological father who is identified under oath before  
327 the court or who is identified by a diligent search of the  
328 Florida Putative Father Registry. Service of the notice of the  
329 petition for termination of parental rights is not required if  
330 the unmarried biological father signs an affidavit of  
331 nonpaternity or a consent to termination of his parental rights  
332 and the affidavit or consent is accepted by the department. The  
333 recipient of the notice may waive service of process by  
334 executing a waiver and acknowledging receipt of the notice. The  
335 notice of petition for termination of parental rights must  
336 specifically state that if the unmarried biological father

desires to contest the petition and assert his parental rights,  
he must, within 30 days after service:

1. File a claim of paternity with the Florida Putative  
Father Registry maintained by the Office of Vital Statistics.

2. Legally establish his rights to the child pursuant to  
the provisions of this chapter.

3. 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 jurisdiction.

4. Provide support for the child as calculated by the  
court under s. 61.30.

5. Establish a substantial relationship with the child  
within the parameters established by court order. A father must  
develop a substantial relationship with the child by taking some  
measure of responsibility for the child and the child's future,  
and by demonstrating a full commitment to the responsibility of  
parenthood by providing financial support to the child in  
accordance with his ability, if not prevented from doing so by  
the person or authorized agency having lawful custody of the  
child, and either:

a. Regularly visit the child at least monthly, when  
physically and financially able to do so and when not prevented  
from doing so by the person or authorized agency having lawful  
custody of the child; or

b. Maintain regular communication with the child or with  
the person or agency having the care or custody of the child,  
when physically or financially unable to visit the child or when

HB 541

2011

not prevented from doing so by the person or authorized agency having lawful custody of the child.

(c) If the unmarried biological father fails to:

1. Timely and properly file a verified response with the court which contains a pledge of commitment to the child;

2. File a claim of paternity with the Florida Putative Father Registry maintained by the Office of Vital Statistics;

3. Legally establish his paternity to the child; or

4. Provide support for the child in an amount to be determined under s. 61.30,

the unmarried biological father shall be precluded from contesting the petition for termination of parental rights, unless otherwise ordered by the court. The unmarried biological father is not entitled to any further notice of any proceedings regarding the child, unless otherwise ordered by the court.

(d) If an unmarried biological father is not identified pursuant to the court inquiry under this subsection, the unmarried biological father's claim that he did not receive actual notice of the termination proceeding is not a defense to the petition nor grounds that the proceeding is otherwise defective.

(e)-(b) If a party required to be served with notice as prescribed in paragraph (a) cannot be served, notice of hearings must be given as prescribed by the rules of civil procedure, and service of process must be made as specified by law or civil actions.

(f)-(e) Notice as prescribed by this section may be waived,

HB 541

2011

in the discretion of the judge, with regard to any person to whom notice must be given under this subsection if the person executes, before two witnesses and a notary public or other officer authorized to take acknowledgments, a written surrender of the child to a licensed child-placing agency or the department.

(g) ~~(d)~~ If the person served with notice under this section fails to personally appear at the advisory hearing, the failure to personally appear shall constitute consent for termination of parental rights by the person given notice. If a parent appears for the advisory hearing and the court orders that parent to personally appear at the adjudicatory hearing for the petition for termination of parental rights, stating the date, time, and location of said hearing, then failure of that parent to personally appear at the adjudicatory hearing shall constitute consent for termination of parental rights.

Section 6. Subsection (1) of section 39.803, Florida Statutes, is amended to read:

39.803 Identity or location of parent unknown after filing of termination of parental rights petition; special procedures.—

(1) If the identity or location of a parent is unknown and a petition for termination of parental rights is filed, the court shall conduct the following inquiry of the parent who is available, or, if no parent is available, of any relative, caregiver, or legal custodian of the child who is present at the hearing and likely to have the information:

(a) Regarding the identity of any man to whom the mother of the child was married at any time when conception of the

HB 541

2011

child may have occurred or at the time of the birth of the child.

(b) Regarding the identity of any man who has filed an affidavit of paternity pursuant to s. 382.013(2)(c) before an advisory hearing is held on a petition for termination of parental rights.

(c) Regarding the identity of any man who has adopted the child.

(d) Regarding the identity of any man who has been adjudicated by a court as the father of the child before an advisory hearing is held on a petition for termination of parental rights.

(e) Regarding the identity of any man whom the mother identified as the father under oath to a representative of the department.

~~(a) 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.~~

(f)~~(b)~~ Whether the mother was cohabiting with a male at the probable time of conception of the child.

(g)~~(c)~~ Whether 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.

(h)~~(d)~~ Whether 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.

(i)~~(e)~~ Whether any man has acknowledged or claimed paternity of the child in a jurisdiction in which the mother



HB 541

2011

449    resided at the time of or since conception of the child, or in  
450    which the child has resided or resides.

451            Section 7.   This act shall take effect July 1, 2011.