

By Senator Flores

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1 A bill to be entitled
2 An act relating to paternity of a child; amending s.
3 39.001, F.S.; providing legislative intent; amending
4 s. 39.01, F.S.; redefining the term "parent" and
5 defining the term "unmarried biological father";
6 amending s. 39.502, F.S.; requiring that an unmarried
7 biological father be individually notified of the
8 filing of a dependency petition under certain
9 circumstances; providing that notice of the petition
10 for dependency is not required if the unmarried
11 biological father signs an affidavit of nonpaternity
12 or consents to termination of his parental rights;
13 providing for waiver of service of process; requiring
14 the notice to specifically warn the unmarried
15 biological father that, if he fails to initiate
16 specified activities, he will be precluded from
17 contesting the petition for dependency or any
18 subsequent petition for termination of parental rights
19 unless otherwise ordered by the court and will receive
20 no further notice of judicial proceedings; amending s.
21 39.503, F.S.; requiring the court to conduct an
22 inquiry of the parent or legal custodian on specified
23 issues if the identity or location of a parent is
24 unknown and a petition for dependency or shelter is
25 filed; requiring that a prospective parent be given
26 the opportunity to become a party to the dependency
27 proceedings if the inquiry and diligent search
28 identifies the prospective parent; requiring the
29 prospective parent to complete a sworn affidavit of

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parenthood and file it with the court or the Department of Children and Family Services; requiring the prospective parent to seek to establish paternity pursuant to ch. 742, F.S., if a child has two legally recognized parents; amending s. 39.801, F.S.; specifying procedures for providing notice to an unmarried biological father in a proceeding for the termination of parental rights; setting forth conditions that the unmarried biological father must follow in order to contest the petition to terminate parental rights; specifying the consequences if the unmarried biological father fails to meet the conditions to prevent termination of parental rights; amending s. 39.803, F.S.; requiring the court to conduct an inquiry of the parent or legal custodian on specified issues if the identity or location of a parent is unknown and a petition for termination of parental rights has been 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, whenever possible, that children have the benefit of loving and caring relationships with both of their

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59 parents and with both maternal and paternal relatives. To that
60 end, parents should be engaged to the fullest extent possible in
61 the lives of their children, and prospective parents should be
62 afforded a prompt, full, and fair opportunity to establish
63 parenthood and to assume all parental duties. However, a
64 prospective parent who is an unmarried biological father as
65 defined in s. 39.01, has no greater rights under this chapter
66 than he would have under chapter 63. Accordingly, his interest
67 is inchoate until such time as he demonstrates a timely and full
68 commitment to the responsibilities of parenthood. Because time
69 is of the essence in actions filed pursuant to this chapter, and
70 the time limitations belong to the child and not to the parent
71 or any prospective parent, including an unmarried biological
72 father, the parent or prospective parent must be aware that
73 failure to comply with the specific requirements of this chapter
74 may result in permanent termination of his or her rights or
75 interests as a parent or prospective parent, whether actual or
76 inchoate.

77 (p) To ensure that each child's right to a permanent,
78 loving, and stable family is protected under the law. Each child
79 has only two legally recognized parents who are entitled to the
80 rights and responsibilities of parenthood, and, if an unmarried
81 biological father seeks parental rights to the child by claiming
82 a biological connection to that child, the unmarried biological
83 father must act expeditiously to assert and establish his
84 parental rights.

85 (q) To compel an unmarried biological father to demonstrate
86 his commitment to his child if he seeks parental rights to the
87 child. The unmarried biological father has the opportunity to

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88 prove his commitment to his child by providing appropriate
89 medical care and financial support to the child and by
90 establishing legal paternity rights for himself.

91 Section 2. Subsection (49) of section 39.01, Florida
92 Statutes, is amended, present subsection (76) of that section is
93 redesignated as subsection (77), and a new subsection (76) is
94 added to that section, to read:

95 39.01 Definitions.—When used in this chapter, unless the
96 context otherwise requires:

97 (49) "Parent" means a woman who gives birth to a child and
98 a man who has legally adopted the child or who was adjudicated
99 by the court to be the father of the minor child, or any man who
100 has filed an affidavit of paternity with the Office of Vital
101 Statistics pursuant to s. 382.013(2)(c) by the date on which an
102 advisory hearing is held on a petition for termination of
103 parental rights of any father whose consent to the adoption of
104 the child would be required under s. 63.062(1). If a child has
105 been legally adopted, the term "parent" means the adoptive
106 mother or father of the child. The term does not include an
107 individual whose parental relationship to the child has been
108 legally terminated, or an alleged or prospective parent, unless
109 the parental status falls within the terms of s. 39.503(1) or s.
110 63.062(1). For purposes of this chapter only, when the phrase
111 "parent or legal custodian" is used, it refers to rights or
112 responsibilities of the parent and, only if there is no living
113 parent with intact parental rights, to the rights or
114 responsibilities of the legal custodian who has assumed the role
115 of the parent.

116 (76) "Unmarried biological father" means the child's

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117 biological father who is not married to the child's mother at
118 the time of conception or birth of the child and who, before the
119 advisory hearing is held on a petition to terminate parental
120 rights conducted pursuant to s. 39.808, has not been adjudicated
121 by a court to be the legal father of the child or has not
122 executed an affidavit pursuant to s. 382.013(2)(c). There is no
123 unmarried biological father if the mother is married at the time
124 of conception or the birth of the child unless otherwise ordered
125 by the dependency court.

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

128 39.502 Notice, process, and service.—

129 (6)(a) It is the duty of the petitioner or moving party to
130 notify all participants and parties known to the petitioner or
131 moving party of all hearings subsequent to the initial hearing
132 unless notice is contained in prior court orders and these
133 orders were provided to the participant or party. Proof of
134 notice or provision of orders may be provided by certified mail
135 with a signed return receipt.

136 (b)1. Notice of the petition for dependency shall be
137 individually served upon any known and locatable unmarried
138 biological father who has been identified before a court that he
139 is the child's father or who has filed a notarized claim of
140 paternity form with the Florida Putative Father Registry.

141 2. Service of the notice of the petition for dependency is
142 not required if the unmarried biological father signs an
143 affidavit of nonpaternity or consents to termination of his
144 parental rights and such affidavit or consent is accepted by the
145 department.

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146 3. The recipient of the notice may waive service of process
147 by executing a waiver and acknowledging receipt of the notice.

148 (c) The notice of the petition for dependency must
149 specifically state that, if the unmarried biological father
150 desires to contest the dependency petition and assert his
151 parental rights, the unmarried biological father must, within 30
152 days after receipt of service:

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

155 2. Commence to legally establish his rights to the child
156 pursuant to this chapter;

157 3. File a verified response with the court in which the
158 unmarried biological father submits to the jurisdiction of the
159 court, pledges his commitment to raise the child, and requests
160 the court to calculate and order child support from the
161 unmarried biological father;

162 4. Provide support for the child as calculated by the court
163 pursuant to s. 61.30; and

164 5. Establish a substantial relationship with the child
165 within the parameters established by court order. An unmarried
166 biological father must develop a substantial relationship with
167 the child by taking some measure of responsibility for the child
168 and the child's future. The unmarried biological father must:

169 a. Visit the child at least monthly if the unmarried
170 biological father is physically and financially able to do so
171 and is not prevented from doing so by the person or authorized
172 agency having lawful custody of the child; or

173 b. Maintain regular communication with the child or with
174 the person or authorized agency having lawful custody of the

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child if the unmarried biological father is physically or financially unable to visit the child and is not prevented from maintaining regular communication with the child by the person or authorized agency having lawful custody of the child.

(d) The unmarried biological father may not contest the petition for dependency or any subsequent petition for termination of parental rights and is not entitled to any further notice of any proceedings regarding the child, unless otherwise ordered by the court, 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 form with the Florida Putative Father Registry;

3. Legally establish his paternity of the child; or

4. Provide support for the child in an amount determined pursuant to s. 61.30.

(e) If the unmarried biological father is not identified during the course of the court inquiry, the unmarried biological father's claim that he did not receive actual notice of the dependency proceeding is not a defense to a finding that the child is dependent.

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

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

(1) If the identity or location of a parent is unknown and a petition for dependency or shelter is filed, the court shall conduct the following inquiry of the parent or legal custodian

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who is available, or, if no parent or legal custodian is available, of any relative or custodian of the child who is present at the hearing and likely to have the information:

(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.

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

(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.

(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.

(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, or in which the child has resided or resides.

(f) Whether any man was married to the mother of the child at the time of conception or birth of the child.

(g) Whether any man has filed an affidavit of paternity pursuant to s. 382.013(2)(c).

(h) Whether any man has adopted the child.

(i) Whether any man has been adjudicated by a court as the father of the child.

(j) Whether the mother, under oath, has identified any man as the father of the child to a representative of the department.

(8) (a) If the inquiry and diligent search identifies a

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233 prospective parent, that person must be given the opportunity to
234 become a party to the proceedings by completing a sworn
235 affidavit of parenthood and filing it with the court or the
236 department. A prospective parent may file ~~who files~~ a sworn
237 affidavit of parenthood only if ~~while~~ the child does not have
238 two legally recognized parents. If a child has two legally
239 recognized parents, the prospective parent must seek to
240 establish paternity pursuant to chapter 742 and substitute his
241 parental rights for the rights of the other father. The
242 dependency court may consider the petition to establish
243 paternity pursuant to chapter 742 as part of the dependency
244 proceedings, including entry of an order or judgment
245 establishing paternity ~~is a dependent child but no later than at~~
246 ~~the time of or prior to the adjudicatory hearing in any~~
247 ~~termination of parental rights proceeding for the child shall be~~
248 ~~considered a parent for all purposes under this section unless~~
249 ~~the other parent contests the determination of parenthood. If~~
250 ~~the known parent contests the recognition of the prospective~~
251 ~~parent as a parent, the prospective parent shall not be~~
252 ~~recognized as a parent until proceedings under chapter 742 have~~
253 ~~been concluded. However, the prospective parent shall continue~~
254 ~~to receive notice of hearings as a participant pending results~~
255 ~~of the chapter 742 proceedings.~~

256 (b) If no parent objects to a request to establish
257 paternity and substitute his parental rights, the court may
258 enter an order substituting the prospective parent's parental
259 rights to the child for the right of the currently recognized
260 father, order the Office of Vital Statistics to amend the
261 child's birth record, and order the prospective parent to pay

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support for the child. If either present parent objects to substitution of the prospective parent's parental rights, the prospective parent may proceed to litigate parental rights pursuant to chapter 742. The dependency court may consider the petition to establish paternity pursuant to 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 claim of parenthood, the court may, after considering the best interest of the child, order scientific testing to determine paternity of the child. Test results are admissible in evidence and should be weighed along with other evidence of the paternity of the alleged father unless the statistical probability of paternity equals or exceeds 95 percent. A statistical probability of paternity of 95 percent or more creates a rebuttable presumption, as defined by s. 90.304, that the alleged father is the biological father of the child. If a party fails to rebut the presumption of paternity which arose from the statistical probability of paternity of 95 percent or more, the court may enter a summary judgment of paternity. If the test results show the alleged father is not the biological father, the prospective parent is no longer entitled to notice of the proceedings. The court shall assess the cost of the paternity determination 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.—

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(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.

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

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

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

"FAILURE TO PERSONALLY APPEAR AT THIS ADVISORY HEARING CONSTITUTES CONSENT TO THE TERMINATION OF PARENTAL RIGHTS OF THIS CHILD (OR CHILDREN). IF YOU FAIL TO APPEAR ON THE DATE AND TIME SPECIFIED, YOU MAY LOSE ALL LEGAL RIGHTS AS A PARENT TO THE

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CHILD OR CHILDREN NAMED IN THE PETITION ATTACHED TO THIS
NOTICE."

(b)1. Notice of the petition for termination of parental
rights shall be individually served upon any known and locatable
unmarried biological father who has been identified before a
court or who has filed a notarized claim of paternity form with
the Florida Putative Father Registry.

2. Service of the notice of the petition for termination of
parental rights is not required if the unmarried biological
father signs an affidavit of nonpaternity or consents to
termination of his parental rights and such affidavit or consent
is accepted by the department.

3. The recipient of the notice may waive service of process
by executing a waiver and acknowledging receipt of the notice.

(c) The notice of petition for termination of parental
rights must specifically state that, if the unmarried biological
father desires to contest the petition and assert his parental
rights, he must, within 30 days after receipt of service:

1. File a claim of paternity form with the Florida Putative
Father Registry.

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

3. File a verified response with the court in which the
unmarried biological father submits to the jurisdiction of the
court, pledges his commitment to raise the child, and requests
the court to calculate and order child support from the
unmarried biological father.

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

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349 5. Establish a substantial relationship with the child
350 within the parameters established by court order. An unmarried
351 biological father must develop a substantial relationship with
352 the child by taking some measure of responsibility for the child
353 and the child's future. The unmarried biological father must:

354 a. Visit the child at least monthly if the unmarried
355 biological father is physically and financially able to do so
356 and is not prevented from doing so by the person or authorized
357 agency having lawful custody of the child; or

358 b. Maintain regular communication with the child or with
359 the person or authorized agency having lawful custody of the
360 child if the unmarried biological father is physically or
361 financially unable to visit the child and is not prevented from
362 maintaining regular communication with the child by the person
363 or authorized agency having lawful custody of the child.

364 (d) The unmarried biological father may not contest the
365 petition for termination of parental rights and is not entitled
366 to any further notice of any proceedings regarding the child,
367 unless otherwise ordered by the court, if the unmarried
368 biological father fails to do any of the following:

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

371 2. File a claim of paternity form with the Florida Putative
372 Father Registry;

373 3. Legally establish his paternity to the child; and

374 4. Provide support for the child in an amount to be
375 determined pursuant to s. 61.30.

376 (e) If an unmarried biological father is not identified
377 during the course of the court inquiry, the unmarried biological

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father's claim that he did not receive actual notice of the termination proceeding is not a defense to the petition and does not serve as grounds for a finding that the proceeding is otherwise defective.

(f)~~(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.

(g)~~(e)~~ Notice as prescribed by this section may be waived, 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.

(h)~~(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

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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) 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.

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

(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.

(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.

(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, or in which the child has resided or resides.

(f) Whether any man was married to the mother of the child at the time of conception or birth of the child.

(g) Whether any man has filed an affidavit of paternity pursuant to s. 382.013(2).

(h) Whether any man has adopted the child.

(i) Whether any man has been adjudicated by a court as the father of the child.

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436 (j) Whether the mother, under oath, has identified any man
437 as the father of the child to a representative of the
438 department.

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