

By the Committee on Children, Families, and Elder Affairs; and
Senator Steube

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1 A bill to be entitled
2 An act relating to the determination of parentage;
3 creating s. 742.19, F.S.; defining the term "alleged
4 parent"; providing presumptions of legal parentage;
5 authorizing a child, the child's mother, or the
6 child's alleged parent to file a petition in circuit
7 court to rebut the presumption of legal parentage;
8 requiring such petition to include certain
9 information; requiring the court to appoint a guardian
10 ad litem or an attorney ad litem under certain
11 conditions; providing qualifications and requirements
12 for a guardian ad litem; requiring the court to hold
13 an evidentiary hearing on the petition; specifying
14 that the petitioner has the burden of producing
15 certain clear and convincing evidence; requiring the
16 court to dismiss the petition under certain
17 circumstances; requiring the court to order genetic
18 testing of the child and the alleged parent if the
19 court allows the petition to proceed; requiring
20 certain information to be included in the order;
21 requiring the alleged parent to file the test results
22 with the court by a specified date; specifying that a
23 statistical probability of parentage of 95 percent or
24 more creates a rebuttable presumption that the alleged
25 parent is a biological parent; providing a procedure
26 for a party to object to the test results; authorizing
27 the court to enter a summary judgment of parentage and
28 requiring the court to hold a trial if a presumption
29 of parentage is established; requiring the court to

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30 dismiss the petition and seal the court file if the
31 test results indicate that the alleged parent is not a
32 biological parent; requiring the court to determine
33 parental rights in the best interest of the child;
34 requiring the court to evaluate specified factors to
35 determine the best interest of the child; providing
36 information to be included in final orders or
37 judgments; authorizing the court to approve, grant, or
38 modify a parenting plan in the best interest of the
39 child and under certain conditions; requiring that a
40 parenting plan include certain information;
41 authorizing the court to order the payment of child
42 support; requiring the court to consider certain
43 criteria in its calculation of child support;
44 authorizing the court to modify a parenting plan or
45 child support order entered pursuant to this section
46 upon a showing by the parent petitioning for
47 modification that a substantial change in
48 circumstances has occurred; clarifying that an order
49 entered under this section does not impugn or affect a
50 child's legitimacy; amending s. 61.046, F.S.;
51 clarifying that a parenting plan entered under a
52 specified section determines the rights of custody and
53 access for purposes of the Uniform Child Custody
54 Jurisdiction and Enforcement Act, the International
55 Child Abduction Remedies Act, and the Convention on
56 the Civil Aspects of International Child Abduction;
57 providing an effective date.

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

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61 Section 1. Section 742.19, Florida Statutes, is created to
62 read:

63 742.19 Establishment of parentage for children born in
64 wedlock or when parentage is otherwise established by law.—

65 (1) As used in this section, the term “alleged parent”
66 means a person with a reasonable and well-founded belief that he
67 or she is a child’s biological parent.

68 (2) A person is presumed to be the legal parent of a child
69 when:

70 (a) At the time of the child’s conception or birth, the
71 person was married to the child’s mother; or

72 (b) Parentage has been established under s. 742.091, s.
73 742.10, or s. 742.105.

74 (3) The child, the child’s mother, or the child’s alleged
75 parent may seek to rebut the presumption of legal parentage in
76 subsection (2) by filing a petition in circuit court. The
77 petition must:

78 (a) Be signed by the petitioner under oath.

79 (b) Identify as parties the mother, the mother’s spouse,
80 the alleged parent, and any other person who may be the parent.

81 (c) Provide specific facts to support a claim that the
82 alleged parent is the biological parent of the child, that the
83 alleged parent has demonstrated a substantial interest in or
84 concern for the welfare of the child, and that it is in the best
85 interest of the child to establish the alleged parent as the
86 legal parent of the child.

87 (4) (a) The court must appoint a guardian ad litem for the

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88 child unless good cause is shown that a guardian ad litem is not
89 necessary to protect the best interest of the child. The person
90 appointed as a guardian ad litem must meet the qualifications in
91 s. 61.402, shall have the powers and authorities described in s.
92 61.403, shall be immune from liability pursuant to s. 61.405,
93 and must maintain confidentiality in accordance with s. 61.404,
94 unless otherwise specified by a court order.

95 (b) If the court determines that the child is of sufficient
96 age and understanding to participate in the proceedings, the
97 court must appoint an attorney ad litem for the child in lieu of
98 a guardian ad litem unless good cause is shown that an attorney
99 ad litem is not necessary to protect the best interest of the
100 child.

101 (5) (a) The court shall hold an evidentiary hearing on the
102 petition and the petitioner has the burden to produce clear and
103 convincing evidence that:

104 1. The alleged parent has demonstrated a substantial
105 interest in or concern for the welfare of the child; and

106 2. The best interest of the child would be served by
107 allowing the petition to proceed.

108 (b) In making its determination, the court shall give
109 particular weight to the fact that the mother is deceased or
110 incapacitated, or that the mother seeks or obtains a dissolution
111 of her marriage to her spouse.

112 (c) If the court determines that the alleged parent has not
113 demonstrated a substantial interest in or concern for the
114 welfare of the child or that the best interest of the child
115 would not be served by allowing the petition to proceed, the
116 court must dismiss the petition and seal the court file.

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117 (6) (a) If the petition is allowed to proceed under
118 subsection (5), the court must order the child and the alleged
119 parent to submit to genetic testing conducted by a qualified
120 technical laboratory, as defined in s. 409.256, to determine the
121 probability of parentage. Upon the entry of the order for
122 scientific testing, the court must inform each person to be
123 tested of the procedures and requirements for objecting to the
124 test results and of the consequences of the failure to object.

125 (b) The alleged parent shall file the test results,
126 together with the opinions and conclusions of the test
127 laboratory, with the court no later than 15 days after the test
128 results are issued. Test results are admissible in evidence and
129 should be weighed along with other evidence of the parentage of
130 the alleged parent unless the statistical probability of
131 parentage equals or exceeds 95 percent. A statistical
132 probability of parentage of 95 percent or more creates a
133 rebuttable presumption, as defined in s. 90.304, that the
134 alleged parent is a biological parent of the child.

135 (c) Any objection to the test results must be made in
136 writing and must be filed with the court no later than 30 days
137 after the test results are filed or as otherwise specified by
138 the court.

139 1. If no objection is filed, the test results shall be
140 admitted into evidence without the need for predicate to be laid
141 or third-party foundation testimony to be presented.

142 2. If an objection is filed, the court must hold an
143 evidentiary hearing. Nothing in this paragraph prohibits a party
144 from calling an outside expert witness to refute or support the
145 testing procedure or results, or the mathematical theory on

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146 which they are based. If the test results or the expert analysis
147 of the inherited characteristics is disputed, the court, upon
148 reasonable request of a party, must order that an additional
149 test be made by the same laboratory or an independent laboratory
150 at the expense of the party requesting additional testing.

151 (d) If no objection is filed or if a party fails to rebut
152 the presumption of parentage which arose from the statistical
153 probability of parentage of 95 percent or more, the court may
154 enter a summary judgment of parentage and must hold a trial
155 pursuant to subsection (7). If the test results indicate that
156 the alleged parent is not a biological parent, the court must
157 dismiss the petition and seal the court file.

158 (7) If the genetic testing establishes that the alleged
159 parent is the biological parent of the child, the court must
160 hold a trial to determine whether:

161 (a) The mother's spouse remains the legal parent of the
162 child based on the best interest of the child;

163 (b) The parentage and legal rights and obligations of the
164 mother's spouse are terminated and granted to the biological
165 parent; or

166 (c) The mother, mother's spouse, and biological parent must
167 share parental rights and responsibilities.

168 (8) To determine the best interest of the child, the court
169 shall evaluate all of the following:

170 (a) The established bond between the child and the mother's
171 spouse, including love, affection, and emotional ties.

172 (b) The established bond between the child and the
173 biological parent, including love, affection, and emotional
174 ties.

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175 (c) The permanence and stability of the child's current
176 family unit or units, including the length of time the child has
177 lived in a satisfactory environment and the desirability of
178 maintaining continuity or creating stability.

179 (d) The capacity and disposition of the mother's spouse and
180 the biological parent to provide for the child's financial
181 needs.

182 (e) The moral fitness of the mother's spouse and the
183 biological parent.

184 (f) The mental and physical health of the mother's spouse
185 and the biological parent.

186 (g) The home, school, and community record of the child.

187 (h) The preference of the child, taking into consideration
188 the child's age and understanding.

189 (i) Whether the mother's spouse or the biological parent
190 has abandoned, abused, or neglected the child, or has otherwise
191 been remiss in his or her responsibilities toward the child.

192 (j) Whether the mother's spouse or the biological parent
193 has ever acted contrary to the best interest of the child.

194 (k) Whether the mother's spouse or the biological parent
195 wishes to exercise or continue to exercise parental rights.

196 (l) Whether the mother is deceased or incapacitated.

197 (m) Whether the mother seeks or obtains a dissolution of
198 her marriage to the spouse.

199 (n) Any other factor affecting the welfare and interests of
200 the child and the circumstances of that family.

201 (9) (a) If the court determines that it is in the best
202 interest of the child for the mother's spouse to remain the
203 legal parent of the child to the exclusion of the biological

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204 parent, the court must dismiss the petition and seal the court
205 file.

206 (b) If the court determines that it is in the best interest
207 of the child for the parental rights of the mother's spouse to
208 be terminated and the biological parent to be the legal parent
209 of the child, the court must enter a final order or judgment:

210 1. Terminating the parental rights and responsibilities of
211 the mother's spouse, declaring that the biological parent is the
212 legal parent of the child, and specifying the biological
213 parent's parental rights and responsibilities, including, but
214 not limited to, time-sharing and child support.

215 2. Requiring that the biological parent's name be
216 substituted on the child's birth certificate and the mother's
217 spouse's name be removed.

218 (c) If the court determines that the mother's spouse and
219 the biological parent have each established a substantial
220 relationship with the child and that it is in the best interest
221 of the child for both the mother's spouse and the biological
222 parent to be the child's legal parents, the court shall enter a
223 final order or judgment:

224 1. Preserving the parental rights of the mother's spouse.

225 2. Establishing the biological parent's parental rights and
226 responsibilities as the child's third legal parent.

227 3. Requiring the Office of Vital Statistics of the
228 Department of Health to amend the child's birth certificate to
229 add the third legal parent.

230 4. Declaring that each legal parent is recognized as an
231 equal parent to the child and has equal standing to secure
232 shared parenting rights to time-sharing, parental

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233 responsibility, and child support.

234 (10) The court may approve, grant, or modify a parenting
235 plan, as defined in s. 61.046, in a final order or judgment
236 entered pursuant to paragraph (9)(b) or paragraph (9)(c). A
237 parenting plan may be developed and agreed to by all legal
238 parents and approved by a court or may be established by the
239 court.

240 (a) The court must consider the factors listed in s.
241 61.13(3) to determine the best interest of the child before
242 approving or establishing a parenting plan. The best interest of
243 the child should govern and be of foremost concern in the
244 court's approval of or establishment of a parenting plan.

245 (b) The court may approve or establish a parenting plan,
246 regardless of whether the child is physically present in this
247 state, if the court finds that the child was removed from this
248 state for the primary purpose of removing the child from the
249 court's jurisdiction in an attempt to avoid the court's
250 approval, creation, or modification of the parenting plan.

251 (c) A parenting plan approved or established by the court
252 must describe the shared responsibilities for the daily tasks of
253 parenting; the time-sharing schedule specifying the time the
254 child will spend with each parent; a designation of which parent
255 will be responsible for health care, school-related matters, and
256 extracurricular activities; the address to be used for school-
257 boundary determination and registration; and the means of
258 communication or technology which the parents will use to
259 communicate with the child.

260 (d) The court shall determine matters relating to the
261 parenting and time-sharing of each child of the parties in

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262 accordance with the Uniform Child Custody Jurisdiction and
263 Enforcement Act, part II of chapter 61.

264 (11) The court may order the payment of child support by
265 any legal parent or parents owing a duty of support in a final
266 order or judgment entered pursuant to paragraph (9) (b) or
267 paragraph (9) (c). When calculating child support, the court
268 shall:

269 (a)1. For an order entered pursuant to paragraph (9) (b),
270 calculate support obligations pursuant to s. 61.30.

271 2. For an order entered pursuant to paragraph (9) (c),
272 ensure that the child receives the same full benefit of the
273 total child support as a child would receive under the
274 guidelines schedule in s. 61.30.

275 (b) Consider each deviation factor listed in s.
276 61.30(11) (a) to ensure that the distribution of the child
277 support is fair and equitable.

278 (12) The court may modify a parenting plan or child support
279 order entered pursuant to this section upon a showing by the
280 parent petitioning for modification that a substantial change in
281 circumstances has occurred.

282 (13) An order entered pursuant to this section does not
283 impugn or affect a child's legitimacy.

284 Section 2. Paragraphs (c) and (d) of subsection (14) of
285 section 61.046, Florida Statutes, are amended to read:

286 61.046 Definitions.—As used in this chapter, the term:

287 (14) "Parenting plan" means a document created to govern
288 the relationship between the parents relating to decisions that
289 must be made regarding the minor child and must contain a time-
290 sharing schedule for the parents and child. The issues

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291 concerning the minor child may include, but are not limited to,
292 the child's education, health care, and physical, social, and
293 emotional well-being. In creating the plan, all circumstances
294 between the parents, including their historic relationship,
295 domestic violence, and other factors must be taken into
296 consideration.

297 (c) For purposes of the Uniform Child Custody Jurisdiction
298 and Enforcement Act, part II of this chapter, a judgment or
299 order incorporating a parenting plan under this part or under s.
300 742.19 is a child custody determination under part II of this
301 chapter.

302 (d) For purposes of the International Child Abduction
303 Remedies Act, 42 U.S.C. ss. 11601 et seq., and the Convention on
304 the Civil Aspects of International Child Abduction, enacted at
305 the Hague on October 25, 1980, rights of custody and rights of
306 access are determined pursuant to the parenting plan under this
307 part or under s. 742.19.

308 Section 3. This act shall take effect July 1, 2018.