

Committee Substitute for House Bill No. 1901

An act relating to child protection; creating s. 383.50, F.S.; prescribing duties of hospitals and fire stations with respect to abandoned newborn infants, as defined; providing for anonymity of such infants' parents; amending s. 39.01, F.S.; redefining the term "abandoned"; amending s. 39.201, F.S.; revising duties of the central abuse hotline to accept specified reports of abandoned newborn infants and disclose names of eligible licensed child-placing agencies; amending s. 63.167, F.S.; providing duties of the state adoption information center with respect to maintaining a list of child-placing agencies with which abandoned newborns may be placed; creating s. 63.0423, F.S.; prescribing rights, duties and procedures for licensed child-placing agencies with respect to custody, placement, and adoption of abandoned newborn infants; providing limited relief from judgment of termination of parental rights; amending s. 63.182, F.S.; providing a statute of repose for setting aside adoptions; providing duties of the Department of Children and Family Services in conjunction with the Department of Health to produce media campaign with respect to abandoned newborns; creating s. 827.035, F.S.; providing that certain actions with respect to a newborn infant shall not constitute neglect or contributing to the dependency of a child; providing an effective date.

WHEREAS, in this state and in the nation, newborn infants have suffered and died as the result of abandonment in life-threatening situations, and

WHEREAS, the parents of newborn infants are often under severe emotional stress, and

WHEREAS, anonymity, confidentiality, and freedom from prosecution for parents may encourage them to leave a newborn infant safely and thus save the newborn infant's life, NOW, THEREFORE,

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

Section 1. Section 383.50, Florida Statutes, is created to read:

383.50 Treatment of abandoned newborn infant.—

(1) As used in this section, the term "newborn infant" means a child that a licensed physician reasonably believes to be approximately 3 days old or younger at the time the child is left at a hospital or a fire station.

(2) There is a presumption that the parent who leaves the newborn infant in accordance with this section intended to leave the newborn infant and consented to termination of parental rights.

(3) Each fire station staffed with full-time firefighters or emergency medical technicians shall accept any newborn infant left with a firefighter or emergency medical technician. The fire station shall consider these actions as implied consent to and shall:

(a) Provide emergency medical services to the newborn infant to the extent he or she is trained to provide those services, and

(b) Arrange for the immediate transportation of the newborn infant to the nearest hospital with emergency services. Any firefighter or emergency medical technician accepting or providing emergency medical services to a newborn infant pursuant to this subsection is immune from criminal or civil liability for having performed the act. Nothing in this subsection limits liability for negligence.

(4) Each hospital of this state subject to s. 395.1041 shall, and any other hospital may, admit and provide all necessary emergency services and care, as defined in s. 395.002(10), to any newborn infant left with the hospital in accordance with this section. The hospital or any of its licensed health care professionals shall consider these actions as implied consent for treatment, and a hospital accepting physical custody of a newborn infant has implied consent to perform all necessary emergency services and care. The hospital or any of its licensed health care professionals is immune from criminal or civil liability for acting in good faith in accordance with this section. Nothing in this subsection limits liability for negligence.

(5) Except where there is actual or suspected child abuse or neglect, any parent who leaves a newborn infant with a firefighter or emergency medical technician at a fire station or brings a newborn infant to an emergency room of a hospital and expresses an intent to leave the newborn infant and not return has the absolute right to remain anonymous and to leave at any time and may not be pursued or followed unless the parent seeks to reclaim the newborn infant.

(6) A parent of a newborn infant left at a hospital or a fire station under this section may claim his or her newborn infant up until the court enters a judgment terminating his or her parental rights. A claim of parental rights of the newborn infant must be made to the entity having physical or legal custody of the newborn infant or to the circuit court before whom proceedings involving the newborn infant are pending.

(7) Upon admitting a newborn infant under this section, the hospital shall immediately contact a local licensed child-placing agency or alternatively contact the statewide central abuse hotline for the name of a licensed child-placing agency for purposes of transferring physical custody of the newborn infant. The hospital shall notify the licensed child-placing agency that a newborn infant has been left with the hospital and approximately when the licensed child-placing agency can take physical custody of the child. In cases where there is actual or suspected child abuse or neglect, the hospital or any of its licensed health care professionals shall report the actual or suspected child abuse or neglect in accordance with ss. 39.1023 and 395.1023 in lieu of contacting a licensed child-placing agency.

(8) Any newborn infant admitted to a hospital in accordance with this section is presumed eligible for coverage under Medicaid, subject to federal rules.

(9) A newborn infant left at a fire station or a hospital in accordance with this section shall not be deemed abandoned subject to reporting and investigation requirements under s. 39.201 unless there is actual or suspected child abuse or until the department takes physical custody of the child.

(10) A criminal investigation shall not be initiated solely because a newborn infant is left at a hospital under this section unless there is actual or suspected child abuse or neglect.

Section 2. Subsections (1) and (30) of section 39.01, Florida Statutes, are amended to read:

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

(1) “Abandoned” means a situation in which the parent or legal custodian of a child or, in the absence of a parent or legal custodian, the caregiver responsible for the child’s welfare, while being able, makes no provision for the child’s support and makes no effort to communicate with the child, which situation is sufficient to evince a willful rejection of parental obligations. If the efforts of such parent or legal custodian, or caregiver primarily responsible for the child’s welfare, to support and communicate with the child are, in the opinion of the court, only marginal efforts that do not evince a settled purpose to assume all parental duties, the court may declare the child to be abandoned. The term “abandoned” does not include an abandoned newborn infant as described in s. 383.50, a “child in need of services” as defined in chapter 984, or a “family in need of services” as defined in chapter 984. The incarceration of a parent, legal custodian, or caregiver responsible for a child’s welfare may support a finding of abandonment.

(30) “Harm” to a child’s health or welfare can occur when any person:

(a) Inflicts or allows to be inflicted upon the child physical, mental, or emotional injury. In determining whether harm has occurred, the following factors must be considered in evaluating any physical, mental, or emotional injury to a child: the age of the child; any prior history of injuries to the child; the location of the injury on the body of the child; the multiplicity of the injury; and the type of trauma inflicted. Such injury includes, but is not limited to:

1. Willful acts that produce the following specific injuries:
 - a. Sprains, dislocations, or cartilage damage.
 - b. Bone or skull fractures.
 - c. Brain or spinal cord damage.
 - d. Intracranial hemorrhage or injury to other internal organs.
 - e. Asphyxiation, suffocation, or drowning.
 - f. Injury resulting from the use of a deadly weapon.

- g. Burns or scalding.
- h. Cuts, lacerations, punctures, or bites.
- i. Permanent or temporary disfigurement.
- j. Permanent or temporary loss or impairment of a body part or function.

As used in this subparagraph, the term “willful” refers to the intent to perform an action, not to the intent to achieve a result or to cause an injury.

2. Purposely giving a child poison, alcohol, drugs, or other substances that substantially affect the child’s behavior, motor coordination, or judgment or that result in sickness or internal injury. For the purposes of this subparagraph, the term “drugs” means prescription drugs not prescribed for the child or not administered as prescribed, and controlled substances as outlined in Schedule I or Schedule II of s. 893.03.

3. Leaving a child without adult supervision or arrangement appropriate for the child’s age or mental or physical condition, so that the child is unable to care for the child’s own needs or another’s basic needs or is unable to exercise good judgment in responding to any kind of physical or emotional crisis.

4. Inappropriate or excessively harsh disciplinary action that is likely to result in physical injury, mental injury as defined in this section, or emotional injury. The significance of any injury must be evaluated in light of the following factors: the age of the child; any prior history of injuries to the child; the location of the injury on the body of the child; the multiplicity of the injury; and the type of trauma inflicted. Corporal discipline may be considered excessive or abusive when it results in any of the following or other similar injuries:

- a. Sprains, dislocations, or cartilage damage.
- b. Bone or skull fractures.
- c. Brain or spinal cord damage.
- d. Intracranial hemorrhage or injury to other internal organs.
- e. Asphyxiation, suffocation, or drowning.
- f. Injury resulting from the use of a deadly weapon.
- g. Burns or scalding.
- h. Cuts, lacerations, punctures, or bites.
- i. Permanent or temporary disfigurement.
- j. Permanent or temporary loss or impairment of a body part or function.
- k. Significant bruises or welts.

(b) Commits, or allows to be committed, sexual battery, as defined in chapter 794, or lewd or lascivious acts, as defined in chapter 800, against the child.

(c) Allows, encourages, or forces the sexual exploitation of a child, which includes allowing, encouraging, or forcing a child to:

1. Solicit for or engage in prostitution; or
2. Engage in a sexual performance, as defined by chapter 827.

(d) Exploits a child, or allows a child to be exploited, as provided in s. 450.151.

(e) Abandons the child. Within the context of the definition of “harm,” the term “abandons the child” means that the parent or legal custodian of a child or, in the absence of a parent or legal custodian, the person responsible for the child’s welfare, while being able, makes no provision for the child’s support and makes no effort to communicate with the child, which situation is sufficient to evince a willful rejection of parental obligation. If the efforts of such a parent or legal custodian or person primarily responsible for the child’s welfare to support and communicate with the child are only marginal efforts that do not evince a settled purpose to assume all parental duties, the child may be determined to have been abandoned. The term “abandoned” does not include an abandoned newborn infant as described in s. 383.50.

(f) Neglects the child. Within the context of the definition of “harm,” the term “neglects the child” means that the parent or other person responsible for the child’s welfare fails to supply the child with adequate food, clothing, shelter, or health care, although financially able to do so or although offered financial or other means to do so. However, a parent or legal custodian who, by reason of the legitimate practice of religious beliefs, does not provide specified medical treatment for a child may not be considered abusive or neglectful for that reason alone, but such an exception does not:

1. Eliminate the requirement that such a case be reported to the department;
2. Prevent the department from investigating such a case; or
3. Preclude a court from ordering, when the health of the child requires it, the provision of medical services by a physician, as defined in this section, or treatment by a duly accredited practitioner who relies solely on spiritual means for healing in accordance with the tenets and practices of a well-recognized church or religious organization.

(g) Exposes a child to a controlled substance or alcohol. Exposure to a controlled substance or alcohol is established by:

1. Use by the mother of a controlled substance or alcohol during pregnancy when the child, at birth, is demonstrably adversely affected by such usage; or

2. Continued chronic and severe use of a controlled substance or alcohol by a parent when the child is demonstrably adversely affected by such usage.

As used in this paragraph, the term “controlled substance” means prescription drugs not prescribed for the parent or not administered as prescribed and controlled substances as outlined in Schedule I or Schedule II of s. 893.03.

(h) Uses mechanical devices, unreasonable restraints, or extended periods of isolation to control a child.

(i) Engages in violent behavior that demonstrates a wanton disregard for the presence of a child and could reasonably result in serious injury to the child.

(j) Negligently fails to protect a child in his or her care from inflicted physical, mental, or sexual injury caused by the acts of another.

(k) Has allowed a child’s sibling to die as a result of abuse, abandonment, or neglect.

(l) Makes the child unavailable for the purpose of impeding or avoiding a protective investigation unless the court determines that the parent, legal custodian, or caregiver was fleeing from a situation involving domestic violence.

Section 3. Present paragraphs (f) and (g) of subsection (2) of section 39.201, Florida Statutes, are redesignated as paragraphs (g) and (h), respectively, and a new paragraph (f) is added to that subsection to read:

39.201 Mandatory reports of child abuse, abandonment, or neglect; mandatory reports of death; central abuse hotline.—

(2)

(f) Reports involving abandoned newborn infants as described in s. 383.50 shall be made and received by the department.

1. If the report is of an abandoned newborn infant as described in s. 383.50 and there is no indication of abuse, neglect, or abandonment of the infant other than that necessarily entailed in the infant having been left at a fire station or hospital, the department shall provide to the caller the name of a licensed child-placing agency on a rotating basis from a list of licensed child-placing agencies eligible and required to accept physical custody of and to place newborn infants left at a hospital or a fire station. The report shall not be considered a report of abuse, neglect, or abandonment solely because the infant has been left at a hospital pursuant to s. 383.50.

2. If the caller reports indications of abuse or neglect beyond that necessarily entailed in the infant having been left at a fire station or hospital, the report shall be considered as a report of abuse, neglect, or abandonment and shall be subject to the requirements of s. 39.395 and all other relevant provisions of this chapter, notwithstanding any provisions of chapter 383.

Section 4. Paragraph (f) is added to subsection (2) of section 63.167, Florida Statutes, to read:

63.167 State adoption information center.—

(2) The functions of the state adoption information center shall include:

(f) Maintaining a list of licensed child-placing agencies eligible and willing to take custody of and place newborn infants left at a hospital, pursuant to s. 383.50. The names and contact information for the licensed child-placing agencies on the list shall be provided on a rotating basis to the statewide central abuse hotline.

Section 5. Section 63.0423, Florida Statutes, is created to read:

63.0423 Procedures with respect to abandoned newborns.—

(1) A licensed child-placing agency that takes physical custody of a newborn infant left at a hospital or a fire station pursuant to s. 383.50, shall assume responsibility for all medical costs and all other costs associated with the emergency services and care of the newborn infant from the time the licensed child-placing agency takes physical custody of the newborn infant.

(2) The licensed child-placing agency shall immediately seek an order from the circuit court for emergency custody of the newborn infant. The emergency custody order shall remain in effect until the court orders preliminary approval of placement of the newborn infant in the prospective home, at which time the prospective adoptive parents become guardians pending termination of parental rights and finalization of adoption or until the court orders otherwise. The licensed child-placing agency may seek to temporarily place the newborn infant in a prospective adoptive home as soon as possible.

(3) The licensed child-placing agency that takes physical custody of the newborn infant shall immediately request assistance from law enforcement officials to investigate and determine, through the Missing Children Information Clearinghouse, the National Center for Missing and Exploited Children, and any other national and state resources, whether or not the newborn infant is a missing child.

(4) Within 7 days after accepting physical custody of the newborn infant, the licensed child-placing agency shall initiate a diligent search to notify and to obtain consent from a parent whose identity or location is unknown, other than the parent who has left a newborn infant at a fire station or a hospital in accordance with s. 383.50. The diligent search must include, at a minimum, inquiries of all known relatives of the parent, inquiries of all offices or program areas of the department likely to have information about the parent, inquiries of other state and federal agencies likely to have information about the parent, inquiries of appropriate utility and postal providers and inquiries of appropriate law enforcement agencies. Constructive notice must also be provided pursuant to chapter 49 in the county where the newborn infant was left and in the county where the petition to terminate parental rights will be filed. The constructive notice must include at a

minimum, available identifying information, and information on whom a parent must contact in order to assert a claim of parental rights of the newborn infant and how to assert that claim. If a parent is identified and located, notice of the adjudicatory hearing shall be provided. If a parent can not be identified or located subsequent to the diligent search and constructive notice, the licensed child-placing agency shall file an affidavit of diligent search at the same time that the petition to terminate parental rights is filed.

(5) A petition for termination of parental rights under this section may not be filed until 30 days after the date the newborn infant was left in accordance with s. 383.50. A petition for termination of parental rights may not be granted until consent to adoption or an affidavit of nonpaternity has been executed by a parent of the newborn infant as set forth in s. 63.062, a parent has failed to reclaim or claim the newborn infant within the specified time period, or the consent of a parent is otherwise waived by the court.

(6) A claim of parental rights of the newborn infant must be made to the entity having physical or legal custody of the newborn infant or to the circuit court before whom proceedings involving the newborn infant are pending. A claim of parental rights of the newborn infant may not be made after the judgment to terminate parental rights is entered, except as otherwise provided by subsection (10).

(7) If a claim of parental rights of a newborn infant is made before the judgement to terminate parental rights is entered, the circuit court shall hold the action for termination of parental rights pending subsequent adoption in abeyance for a period of time not to exceed 60 days.

(a) The court shall order scientific testing to determine maternity or paternity at the expense of the parent claiming parental rights unless maternity or paternity has been previously established legally or by scientific testing.

(b) The court may appoint a guardian ad litem for the newborn infant and order whatever investigation, home evaluation and psychological evaluation are necessary to determine what is in the best interest of the newborn infant.

(c) The court may not terminate parental rights solely on the basis that the parent left a newborn infant at a hospital or fire station in accordance with s. 383.50.

(d) The court shall enter a judgment with written findings of fact and conclusions of law.

(8) Within 24 hours after filing the judgment, the clerk of the court shall mail a copy of the judgment to the department, the petitioner, and the persons whose consent were required, if known. The clerk shall execute a certificate of each mailing.

(9)(a) A judgment terminating parental rights pending adoption is voidable, and any later judgment of adoption of that minor is voidable, if, upon

the motion of a parent, the court finds that a person knowingly gave false information that prevented the parent from timely making known his or her desire to assume parental responsibilities toward the minor or from exercising his or her parental rights. A motion under this subsection must be filed with the court originally entering the judgment. The motion must be filed within a reasonable time, but not later than 2 years after the entry of the judgment terminating parental rights.

(b) No later than 30 days after the filing of a motion under this subsection, the court must conduct a preliminary hearing to determine what contact, if any, will be permitted between a parent and the child pending resolution of the motion. Such contact may be allowed only if it is requested by a parent who has appeared at the hearing. If the court orders contact between a parent and child, the order must be issued in writing as expeditiously as possible and must state with specificity any provisions regarding contact with persons other than those with whom the child resides.

(c) At the preliminary hearing the court, upon the motion of any party or upon its own motion, may order scientific testing to determine the paternity or maternity of the minor if the person seeking to set aside the judgment is alleging to be the child's parent and that fact has not previously been determined by legal proceedings or scientific testing. The court may order supervised visitation with a person for whom scientific testing for paternity or maternity has been ordered. Such visitation shall be conditioned upon the filing of test results with the court and those results establishing that person's paternity or maternity of the minor.

(d) No later than 45 days after the preliminary hearing, the court must conduct a final hearing on the motion to set aside the judgment and enter its written order as expeditiously as possible thereafter.

(10) Except to the extent expressly provided in this section, proceedings initiated by a licensed child-placing agency for the termination of parental rights and subsequent adoption of a newborn left at a hospital or a fire station in accordance with s. 383.50 shall be conducted pursuant to chapter 63.

Section 6. Section 63.182, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 63.182, F.S., for present text.)

63.182 Statute of repose.—Notwithstanding s. 95.031 or s. 95.11 or any other statute:

(1) An action or proceeding of any kind to vacate, set aside, or otherwise nullify a judgment of adoption or an underlying judgment terminating parental rights on any ground, including duress but excluding fraud, shall in no event be filed more than 1 year after entry of the judgment terminating parental rights.

(2) An action or proceeding of any kind to vacate, set aside, or otherwise nullify a judgment of adoption or an underlying judgment terminating pa-

rental rights on grounds of fraud shall in no event be filed more than 2 years after entry of the judgment terminating parental rights.

Section 7. Department; duties with respect to abandoned newborns.—The Department of Health in conjunction with the Department of Children and Family Services shall produce a media campaign to promote safe placement alternatives for newborn infants, to inform the public concerning the confidentiality and limited immunity from criminal prosecution offered to a parent who leaves a newborn infant at a hospital or a fire station under s. 383.50, Florida Statutes, and the rights of parents to reclaim or claim their newborn infant within specified time periods, and to publicize adoption procedures.

Section 8. Section 827.035, Florida Statutes, is created to read:

827.035 Newborn infants.—It shall not constitute neglect of a child pursuant to s. 827.03 or contributing to the dependency of a child pursuant to s. 827.04, if a parent leaves a newborn infant, as defined in s. 383.50, at a hospital or fire station or brings a newborn infant to an emergency room and expresses an intent to leave the infant and not return, in compliance with s. 383.50.

Section 9. This act shall take effect July 1, 2000.

Approved by the Governor June 2, 2000.

Filed in Office Secretary of State June 2, 2000.