

## Committee Substitute for House Bill No. 141

An act relating to adoption; amending ss. 39.703, 39.802, 39.806, and 39.811, F.S., relating to the petition and grounds for terminating parental rights and powers of disposition; removing authority of licensed child-placing agencies to file actions to terminate parental rights; amending s. 39.812, F.S.; providing additional requirements for a petition for adoption; prohibiting filing such petition until the order terminating parental rights is final; amending s. 63.022, F.S.; revising legislative intent with respect to adoptions; amending s. 63.032, F.S.; revising definitions; defining "adoption entity," "legal custody," "parent," and "relative"; creating s. 63.037, F.S.; providing exemptions from certain provisions of ch. 63, F.S., for adoption proceedings initiated under ch. 39, F.S.; creating s. 63.039, F.S.; providing duties of an adoption entity to prospective adoptive parents; providing sanctions and an award of attorney's fees under certain circumstances; amending s. 63.0425, F.S.; conforming provisions relating to grandparent's right to adopt; amending s. 63.0427, F.S.; allowing biological relatives to have communication or contact with an adoptive child under certain conditions; amending s. 63.052, F.S.; providing for placement of a minor pending adoption; specifying the jurisdiction of the court over a minor placed for adoption; amending s. 63.062, F.S.; specifying additional persons who must consent to an adoption, execute an affidavit of nonpaternity, or receive notice of proceedings to terminate parental rights; providing for form and content of affidavit of nonpaternity; providing for notice of the right to select a witness; providing a form for waiver of venue; amending s. 63.082, F.S.; revising requirements and form for executing a consent to an adoption; making such requirements applicable to affidavit of nonpaternity; providing a revocation period and requirements for withdrawing consent; providing additional disclosure requirements; revising requisite history form to include social history; amending s. 63.085, F.S.; specifying information that must be disclosed to persons seeking to adopt a minor and to the parents; creating s. 63.087, F.S.; requiring that a separate proceeding be conducted by the court to determine whether a parent's parental rights should be terminated; providing for rules, jurisdiction, and venue for such proceedings; providing requirements for the petition and hearing; requiring notification to grandparents; creating s. 63.088, F.S.; providing diligent search and court inquiry requirements for identifying and locating a person who is required to consent to an adoption or receive notice of proceedings to terminate parental rights; providing notice requirements including notice by constructive service; providing that failure to respond or appear constitutes grounds to terminate parental rights pending adoption; creating s. 63.089, F.S.; providing hearing procedures for proceedings to terminate parental rights pending adoption; specifying grounds upon which parental rights may be terminated; providing for finding of abandonment; providing for dismissal of petition procedures; providing for post-judgment relief; providing for confidentiality of records; amending

s. 63.092, F.S.; providing requirements in an at-risk placement before termination of parental rights; prohibiting placement of minors in homes with certain criminal offenders; amending s. 63.097, F.S.; revising fee requirements to provide for allowable and prohibited fees and costs; amending s. 63.102, F.S.; revising requirements for filing a petition for adoption; providing requirements for prior approval of fees and costs; revising requirements for declaratory statement as to adoption contract; amending s. 63.112, F.S.; revising requirements for form and content of a petition for adoption; amending s. 63.122, F.S.; revising the time requirements for hearing a petition for adoption; amending s. 63.125, F.S.; conforming provisions relating to the final home investigation; amending s. 63.132, F.S.; revising requirements for affidavit of expenses and receipts; requiring separate court order approving fees, costs, and expenses; amending s. 63.142, F.S.; specifying circumstances under which a judgment terminating parental rights pending adoption is voidable; providing for an evidentiary hearing to determine the minor's placement following a motion to void such a judgment; amending s. 63.162, F.S.; conforming provisions relating to confidential records of adoption proceedings; amending s. 63.165, F.S.; requiring that the Department of Children and Family Services maintain certain information in the state registry of adoption information for a specified period; amending s. 63.202, F.S.; conforming provisions relating to agencies authorized to place minors for adoption; amending s. 63.207, F.S.; revising provisions that limit the placement of a minor in another state for adoption; amending s. 63.212, F.S.; revising provisions relating to prohibitions and penalties with respect to adoptions; amending s. 63.219, F.S.; conforming provisions relating to sanctions; creating s. 63.2325, F.S.; providing conditions for revocation of a consent to adoption or withdrawal of an affidavit of nonpaternity; amending ss. 984.03 and 985.03, F.S.; conforming cross references; repealing s. 63.072, F.S., relating to persons who may waive required consent to an adoption; requiring that a petition for adoption be governed by the law in effect at the time the petition is filed; providing for severability; creating s. 395.1024, F.S.; requiring a licensed facility to adopt protocol for staff concerning adoption; creating s. 383.310, F.S.; requiring a licensed facility to adopt protocol for staff concerning adoption; providing an effective date.

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

Section 1. Section 39.703, Florida Statutes, is amended to read:

39.703 Initiation of termination of parental rights proceedings; judicial review.—

(1) If, in preparation for any judicial review hearing under this chapter, it is the opinion of the social service agency that the parents of the child have not complied with their responsibilities as specified in the written case plan although able to do so, the department ~~social service agency~~ shall state its intent to initiate proceedings to terminate parental rights, unless the social service agency can demonstrate to the court that such a recommendation

would not be in the child's best interests. If it is the intent of the department ~~or licensed child-placing agency~~ to initiate proceedings to terminate parental rights, the department ~~or licensed child-placing agency~~ shall file a petition for termination of parental rights no later than 3 months after the date of the previous judicial review hearing. If the petition cannot be filed within 3 months, the department ~~or licensed child-placing agency~~ shall provide a written report to the court outlining the reasons for delay, the progress made in the termination of parental rights process, and the anticipated date of completion of the process.

(2) If, at the time of the 12-month judicial review hearing, a child is not returned to the physical custody of the parents, the department social service agency shall initiate termination of parental rights proceedings under this chapter within 30 days. Only if the court finds that the situation of the child is so extraordinary and that the best interests of the child will be met by such action at the time of the judicial review may the case plan be extended. If the court decides to extend the plan, the court shall enter detailed findings justifying the decision to extend, as well as the length of the extension. A termination of parental rights petition need not be filed if: the child is being cared for by a relative who chooses not to adopt the child but who is willing, able, and suitable to serve as the legal custodian for the child until the child reaches 18 years of age; the court determines that filing such a petition would not be in the best interests of the child; or the state has not provided the child's parent, when reasonable efforts to return a child are required, consistent with the time period in the state's case plan, such services as the state deems necessary for the safe return of the child to his or her home. Failure to initiate termination of parental rights proceedings at the time of the 12-month judicial review or within 30 days after such review does not prohibit initiating termination of parental rights proceedings at any other time.

Section 2. Subsections (1) and (2) of section 39.802, Florida Statutes, are amended to read:

39.802 Petition for termination of parental rights; filing; elements.—

(1) All proceedings seeking an adjudication to terminate parental rights pursuant to this chapter must be initiated by the filing of an original petition by the department, the guardian ad litem, ~~a licensed child-placing agency~~, or any other person who has knowledge of the facts alleged or is informed of them and believes that they are true.

(2) The form of the petition is governed by the Florida Rules of Juvenile Procedure. The petition must be in writing and signed by the petitioner or, if the department is the petitioner, by an employee of the department, under oath stating the petitioner's good faith in filing the petition.

Section 3. Subsection (1) of section 39.806, Florida Statutes, is amended to read:

39.806 Grounds for termination of parental rights.—

(1) The department, the guardian ad litem, ~~a licensed child-placing agency~~, or any person who has knowledge of the facts alleged or who is informed of those said facts and believes that they are true, may petition for the termination of parental rights under any of the following circumstances:

(a) When the parent or parents have voluntarily executed a written surrender of the child and consented to the entry of an order giving custody of the child to the department ~~or to a licensed child-placing agency~~ for subsequent adoption and the department ~~or licensed child-placing agency~~ is willing to accept custody of the child.

1. The surrender document must be executed before two witnesses and a notary public or other person authorized to take acknowledgments.

2. The surrender and consent may be withdrawn after acceptance by the department ~~or licensed child-placing agency~~ only after a finding by the court that the surrender and consent were obtained by fraud or under duress.

(b) Abandonment as defined in s. 39.01(1) or when the identity or location of the parent or parents is unknown and cannot be ascertained by diligent search within 60 days.

(c) When the parent or parents engaged in conduct toward the child or toward other children that demonstrates that the continuing involvement of the parent or parents in the parent-child relationship threatens the life, safety, well-being, or physical, mental, or emotional health of the child irrespective of the provision of services. Provision of services may be evidenced by proof that services were provided through a previous plan or offered as a case plan from a child welfare agency.

(d) When the parent of a child is incarcerated in a state or federal correctional institution and either:

1. The period of time for which the parent is expected to be incarcerated will constitute a substantial portion of the period of time before the child will attain the age of 18 years;

2. The incarcerated parent has been determined by the court to be a violent career criminal as defined in s. 775.084, a habitual violent felony offender as defined in s. 775.084, or a sexual predator as defined in s. 775.21; has been convicted of first degree or second degree murder in violation of s. 782.04 or a sexual battery that constitutes a capital, life, or first degree felony violation of s. 794.011; or has been convicted of an offense in another jurisdiction which is substantially similar to one of the offenses listed in this paragraph. As used in this section, the term "substantially similar offense" means any offense that is substantially similar in elements and penalties to one of those listed in this subparagraph, and that is in violation of a law of any other jurisdiction, whether that of another state, the District of Columbia, the United States or any possession or territory thereof, or any foreign jurisdiction; or

3. The court determines by clear and convincing evidence that continuing the parental relationship with the incarcerated parent would be harmful to

the child and, for this reason, that termination of the parental rights of the incarcerated parent is in the best interest of the child.

(e) A petition for termination of parental rights may also be filed when a child has been adjudicated dependent, a case plan has been filed with the court, and the child continues to be abused, neglected, or abandoned by the parents. In this case, the failure of the parents to substantially comply for a period of 12 months after an adjudication of the child as a dependent child or the child's placement into shelter care, whichever came first, constitutes evidence of continuing abuse, neglect, or abandonment unless the failure to substantially comply with the case plan was due either to the lack of financial resources of the parents or to the failure of the department to make reasonable efforts to reunify the parent and child. Such 12-month period may begin to run only after the child's placement into shelter care or the entry of a disposition order placing the custody of the child with the department or a person other than the parent and the approval by the court of a case plan with a goal of reunification with the parent, whichever came first.

(f) When the parent or parents engaged in egregious conduct or had the opportunity and capability to prevent and knowingly failed to prevent egregious conduct that threatens the life, safety, or physical, mental, or emotional health of the child or the child's sibling.

1. As used in this subsection, the term "sibling" means another child who resides with or is cared for by the parent or parents regardless of whether the child is related legally or by consanguinity.

2. As used in this subsection, the term "egregious conduct" means abuse, abandonment, neglect, or any other conduct of the parent or parents that is deplorable, flagrant, or outrageous by a normal standard of conduct. Egregious conduct may include an act or omission that occurred only once but was of such intensity, magnitude, or severity as to endanger the life of the child.

(g) When the parent or parents have subjected the child to aggravated child abuse as defined in s. 827.03, sexual battery or sexual abuse as defined in s. 39.01, or chronic abuse.

(h) When the parent or parents have committed murder or voluntary manslaughter of another child, or a felony assault that results in serious bodily injury to the child or another child, or aided or abetted, attempted, conspired, or solicited to commit such a murder or voluntary manslaughter or felony assault.

(i) When the parental rights of the parent to a sibling have been terminated involuntarily.

Section 4. Subsections (2) and (8) of section 39.811, Florida Statutes, are amended to read:

39.811 Powers of disposition; order of disposition.—

(2) If the child is in the custody of the department and the court finds that the grounds for termination of parental rights have been established by

clear and convincing evidence, the court shall, by order, place the child in the custody of the department ~~or a licensed child-placing agency~~ for the purpose of adoption.

(8) If the court terminates parental rights, it shall, in its order of disposition, provide for a hearing, to be scheduled no later than 30 days after the date of disposition, in which the department ~~or the licensed child-placing agency~~ shall provide to the court an amended case plan ~~that~~ which identifies the permanency goal for the child. Reasonable efforts must be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child. Thereafter, until the adoption of the child is finalized or the child reaches the age of 18 years, whichever occurs first, the court shall hold hearings at 6-month intervals to review the progress being made toward permanency for the child.

Section 5. Section 39.812, Florida Statutes, is amended to read:

39.812 Postdisposition relief; petition for adoption.—

(1) ~~If A licensed child-placing agency or the department which is given custody of a child for subsequent adoption in accordance with this chapter, the department may place the child with an agency as defined in s. 63.032, with a child-caring agency registered under s. 409.176, or in a family home for prospective subsequent adoption,; and the licensed child-placing agency or~~ The department may thereafter become a party to any proceeding for the legal adoption of the child and appear in any court where the adoption proceeding is pending and consent to the adoption,; and that consent alone shall in all cases be sufficient.

(2) In any subsequent adoption proceeding, the parents ~~are shall not be entitled to any notice of the proceeding and are not thereof, nor shall they be entitled to knowledge at any time after the order terminating parental rights is entered of the whereabouts of the child or of the identity or location of any person having the custody of or having adopted the child, except as provided by order of the court pursuant to this chapter or chapter 63,; and~~ In any habeas corpus or other proceeding involving the child brought by any parent of the child, ~~an~~ no agent or contract provider of the ~~licensed child-placing agency or department~~ may not ~~shall~~ be compelled to divulge that information, but may be compelled to produce the child before a court of competent jurisdiction if the child is still subject to the guardianship of the ~~licensed child-placing agency or department.~~

(3) The entry of the custody order to the department ~~does or licensed child-placing agency shall not entitle the licensed child-placing agency or department to guardianship of the estate or property of the child, but the licensed child-placing agency or department shall be the guardian of the person of the child.~~

(4) The court shall retain jurisdiction over any child ~~placed in the custody of for whom custody is given to a licensed child-placing agency or to the department until the child is adopted. After custody of a child for subsequent adoption has been given to an agency or the department, the court has~~

jurisdiction for the purpose of reviewing the status of the child and the progress being made toward permanent adoptive placement. As part of this continuing jurisdiction, for good cause shown by the guardian ad litem for the child, the court may review the appropriateness of the adoptive placement of the child.

(5) The petition for adoption must be filed in the division of the circuit court which entered the judgment terminating parental rights, unless a motion for change of venue is granted pursuant to s. 47.122. A copy of the consent executed by the department as required under s. 63.062(7) must be attached to the petition. The petition must be accompanied by a form provided by the department which details the social and medical history of the child and each parent and includes the social security number and date of birth for each parent, if such information is available or readily obtainable. The person seeking to adopt the child may not file a petition for adoption until the judgment terminating parental rights becomes final. An adoption proceeding under this subsection is governed by chapter 63, as limited under s. 63.037.

Section 6. Section 63.022, Florida Statutes, is amended to read:

63.022 Legislative intent.—

(1) It is the intent of the Legislature to protect and promote the well-being of persons being adopted and their birth and adoptive parents and to provide to all children who can benefit by it a permanent family life, and, whenever possible, to maintain sibling groups.

(2) The basic safeguards intended to be provided by this chapter act are that:

(a) The minor child is legally free for adoption.

(b) The required persons consent to the adoption or the parent-child relationship is terminated by judgment of the court.

(c) The required social studies are completed and the court considers the reports of these studies prior to judgment on adoption petitions.

(d) All placements of minors for adoption are reported to the Department of Children and Family Services.

(e) A sufficient period of time elapses during which the minor child has lived within the proposed adoptive home under the guidance of the department, a child-caring agency registered under s. 409.176, or a licensed child-placing agency.

(f) All expenditures by adoption entities intermediaries placing, and persons independently adopting, a minor are reported to the court and become a permanent record in the file of the adoption proceedings.

(g) Social and medical information concerning the minor child and the birth parents is furnished by the birth parent when available and filed with the court before a final hearing on a petition to terminate parental rights

pending adoption ~~consent to the adoption when a minor is placed by an intermediary.~~

(h) A new birth certificate is issued after entry of the adoption judgment.

(i) At the time of the hearing, the court may ~~is authorized to~~ order temporary substitute care when it determines that the minor is in an unsuitable home.

(j) The records of all proceedings concerning custody and adoption of a minor children are confidential and exempt from ~~the provisions of~~ s. 119.07(1), except as provided in s. 63.162.

(k) The ~~birth~~ parent, the prospective adoptive parent, and the minor child receive, at a minimum, the same or similar safeguards, guidance, counseling, and supervision required in this chapter in an intermediary adoption as they receive in an agency or department adoption.

(l) In all matters coming before the court under ~~pursuant to this chapter~~ act, the court shall enter such orders as it deems necessary and suitable to promote and protect the best interests of the person to be adopted.

(m) In dependency cases initiated by the department, where termination of parental rights occurs, and siblings are separated despite diligent efforts of the department, continuing postadoption communication or contact among the siblings may be ordered by the court if found to be in the best interests of the children.

Section 7. Section 63.032, Florida Statutes, is amended to read:

63.032 Definitions.—As used in this chapter act, ~~unless the context otherwise requires,~~ the term:

(1)(14) “Abandoned” means a situation in which the parent or person having legal custody ~~legal custodian~~ of a child, 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, in the opinion of the court, the efforts of such parent or person having legal custody of the child ~~legal custodian~~ to support and communicate with the child are only marginal efforts that do not evince a settled purpose to assume all parental duties, the court may declare the child to be abandoned. In making this decision, the court may consider the conduct of a father towards the child’s mother during her pregnancy.

(2)(40) “Adoption” means the act of creating the legal relationship between parent and child where it did not exist, thereby declaring the child to be legally the child of the adoptive parents and their heir at law and entitled to all the rights and privileges and subject to all the obligations of a child born to such adoptive parents in lawful wedlock.

(3) “Adoption entity” means the department, an agency, a child-caring agency registered under s. 409.176, or an intermediary.



(4)(5) “Adult” means a person who is not a minor.

(5)(7) “Agency” means any child-placing agency licensed by the department pursuant to s. 63.202 to place minors for adoption.

(6)(2) “Child” means a son or daughter, whether by birth or adoption.

(7)(3) “Court” means any circuit court of this state and, when the context requires, the court of any state that is empowered to grant petitions for adoption.

(8)(4) “Department” means the Department of Children and Family Services.

(9)(8) “Intermediary” means an attorney ~~or physician~~ who is licensed or authorized to practice in this state and who is placing or intends to place a child for adoption or, for the purpose of adoptive placements of children from out of state with citizens of this state, a child-placing agency licensed in another state that is qualified by the department.

(10) “Legal custody” has the meaning ascribed in s. 39.01.

(11)(4) “Minor” means a person under the age of 18 years.

(12) “Parent” has the same meaning ascribed in s. 39.01.

(13)(6) “Person” includes a natural person, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, or association, and any other legal entity.

(14) “Relative” has the same meaning ascribed in s. 39.01.

(15)(9) “To place” or “placement” means the process of a person giving a child up for adoption and the prospective parents receiving and adopting the child, and includes all actions by any person or adoption entity agency participating in the process.

(16)(43) “Primarily lives and works outside Florida” means anyone who does not meet the definition of “primary residence and place of employment in Florida.”

(17)(42) “Primary residence and place of employment in Florida” means a person lives and works in this state at least 6 months of the year and intends to do so for the foreseeable future or military personnel who designate Florida as their place of residence in accordance with the Soldiers’ and Sailors’ Civil Relief Act of 1940 or employees of the United States Department of State living in a foreign country who designate Florida as their place of residence.

(18)(41) “Suitability of the intended placement” includes the fitness of the intended placement, with primary consideration being given to the welfare of the child; the fitness and capabilities of the adoptive parent or parents to function as parent or parents for a particular child; any familial relationship between the child and the prospective placement; and the com-

patibility of the child with the home in which the child is intended to be placed.

Section 8. Section 63.037, Florida Statutes, is created to read:

63.037 Proceedings applicable to cases resulting from a termination of parental rights under chapter 39.—A case in which a minor becomes available for adoption after the parental rights of each parent have been terminated by a judgment entered pursuant to chapter 39 shall be governed by s. 39.812 and this chapter. Adoption proceedings initiated under chapter 39 are exempt from the following provisions of this chapter: disclosure requirements for the adoption entity provided in s. 63.085; general provisions governing termination of parental rights pending adoption provided in s. 63.087; notice and service provisions governing termination of parental rights pending adoption provided in s. 63.088; and procedures for terminating parental rights pending adoption provided in s. 63.089.

Section 9. Section 63.039, Florida Statutes, is created to read:

63.039 Duty of adoption entity to prospective adoptive parents; sanctions.—

(1) An adoption entity placing a minor for adoption has an affirmative duty to follow the requirements of this chapter and specifically the following provisions, which protect and promote the well-being of persons being adopted and their parents and prospective adoptive parents by promoting certainty, finality, and permanency for such persons. The adoption entity must:

(a) Provide written initial disclosure to the prospective adoptive parent at the time and in the manner required under s. 63.085.

(b) Provide written initial and postbirth disclosure to the parent at the time and in the manner required under s. 63.085.

(c) When a written consent for adoption is obtained, obtain the consent at the time and in the manner required under s. 63.082.

(d) When a written consent or affidavit of nonpaternity for adoption is obtained, obtain a consent to adoption or affidavit of nonpaternity that contains the language required under s. 63.062 or s. 63.082.

(e) Include in the petition to terminate parental rights pending adoption all information required under s. 63.087(6)(e) and (f).

(f) Obtain and file the affidavit of inquiry pursuant to s. 63.088(3), if the required inquiry is not conducted orally in the presence of the court.

(g) When the identity of a person whose consent to adoption is necessary under this chapter is known but the location of such a person is unknown, conduct the diligent search and file the affidavit required under s. 63.088(4).

(h) Serve the petition and notice of hearing to terminate parental rights pending adoption at the time and in the manner required by s. 63.088.

(i) Obtain the written waiver of venue required under s. 63.062 in cases involving a child younger than 6 months of age in which venue for the termination of parental rights will be located in a county other than the county where the parent whose rights are to be terminated resides.

(2) If a court finds that a consent to adoption or an affidavit of nonpaternity taken under this chapter was obtained by fraud or under duress attributable to the adoption entity, the court must award all sums paid by the prospective adoptive parents or on their behalf in anticipation of or in connection with the adoption. The court may also award reasonable attorney's fees and costs incurred by the prospective adoptive parents in connection with the adoption and any litigation related to placement or adoption of a minor. The court must award reasonable attorney's fees and costs, if any, incurred by the person whose consent or affidavit was obtained by fraud or under duress. Any award under this subsection to the prospective adoptive parents or to the person whose consent or affidavit was obtained by fraud or under duress must be paid directly to them by the adoption entity or by any applicable insurance carrier on behalf of the adoption entity.

(3) If a person whose consent to an adoption is required under s. 63.062 prevails in an action to set aside a judgment terminating parental rights pending adoption, or a judgment of adoption, the court must award reasonable attorney's fees and costs to the prevailing party. An award under this subsection must be paid by the adoption entity or by any applicable insurance carrier on behalf of the adoption entity if the court finds that the acts or omissions of the entity were the basis for the court's order granting relief to the prevailing party.

(4) Within 30 days after the date that the order was issued, the clerk of the court must forward to:

(a) The Florida Bar any order that imposes sanctions under this section against an attorney acting as an adoption entity.

(b) The Department of Children and Family Services any order that imposes sanctions under this section against a licensed child-placing agency or a child-placing agency licensed in another state that is qualified by the department.

(c) The entity under s. 409.176 that certifies child-caring agencies any order that imposes sanctions under this section against a child-caring agency registered under s. 409.176.

Section 10. Subsection (1) of section 63.0425, Florida Statutes, is amended to read:

63.0425 Grandparent's right to adopt.—

(1) When a child who has lived with a grandparent for at least 6 months is placed for adoption, the adoption entity agency or intermediary handling the adoption shall notify that grandparent of the impending adoption before the petition for adoption is filed. If the grandparent petitions the court to adopt the child, the court shall give first priority for adoption to that grandparent.

Section 11. Section 63.0427, Florida Statutes, is amended to read:

63.0427 Adopted minor's right to continued communication or contact with siblings.—

(1) A child whose parents have had their parental rights terminated and whose custody has been awarded to the department pursuant to s. 39.811, and who is the subject of a petition for adoption under this chapter, shall have the right to have the court consider the appropriateness of postadoption communication or contact, including, but not limited to, visits, letters and cards, or telephone calls, with his or her siblings or, upon agreement of the adoptive parents, other specified biological relatives who are not included in the petition for adoption. The court shall determine if the best interests of the child support such continued communication or contact and shall consider the following in making such determination:

- (a) Any orders of the court pursuant to s. 39.811(7).
- (b) Recommendations of the department, the foster parents if other than the adoptive parents, and the guardian ad litem.
- (c) Statements of prospective adoptive parents.
- (d) Any other information deemed relevant and material by the court.

If the court determines that the child's best interests will be served by postadoption communication or contact with any sibling or, upon agreement of the adoptive parents, other specified biological relatives, the court shall so order, stating the nature and frequency for the communication or contact. This order shall be made a part of the final adoption order, but in no event shall continuing validity of the adoption be contingent upon such postadoption communication or contact, nor shall the ability of the adoptive parents and child to change residence within or outside the State of Florida be impaired by such communication or contact.

(2) Notwithstanding the provisions of s. 63.162, the adoptive parent may petition for review at any time of a sibling's or other specified biological relatives' sibling communication or contact ordered pursuant to subsection (1), if the adoptive parent believes that the best interests of the adopted child are being compromised, and the court shall have authority to order the communication or contact to be terminated, or to order such conditions in regard to communication or contact as the court deems to be in the best interests of the adopted child. As part of the review process, the court may order the parties to engage in mediation. The department shall not be required to be a party to such review.

Section 12. Section 63.052, Florida Statutes, is amended to read:

63.052 Guardians designated; proof of commitment.—

(1) For minors who have been placed for adoption with and permanently committed to an agency as defined in s. 63.032 or a child-caring agency registered under s. 409.176, ~~such~~ the agency shall be the guardian of the

person of the minor child; for those who have been placed for adoption with and permanently committed to the department, the department shall be the guardian of the person of the minor child.

(2) For minors who have been voluntarily surrendered to an intermediary through an execution of consent to adoption, the intermediary shall be responsible for the minor child until the time a court orders preliminary approval of placement of the minor child in the prospective adoptive home, at which time the prospective adoptive parents become guardians pending finalization of adoption. Until a court has terminated parental rights pending adoption and has ordered preliminary approval of placement of the minor in the adoptive home, the minor must be placed in the care of a relative as defined in s. 39.01, in foster care as defined in s. 39.01, or in the care of a prospective adoptive home. No minor shall be placed in a prospective adoptive home until that home has received a favorable preliminary home study by a licensed child-placing agency, a licensed professional, or an agency, as provided in s. 63.092, within 1 year before such placement in the prospective home. Temporary placement in the prospective home with the prospective adoptive parents does not give rise to a presumption that the parental rights of the parents will subsequently be terminated.

(2) For minors who have been placed for adoption with or voluntarily surrendered to an agency, but have not been permanently committed to the agency, the agency shall have the responsibility and authority to provide for the needs and welfare for such minors. For those minors placed for adoption with or voluntarily surrendered to the department, but not permanently committed to the department, the department shall have the responsibility and authority to provide for the needs and welfare for such minors. ~~The adoption entity may department, an intermediary, or a licensed child-placing agency has the authority to authorize all appropriate medical care for a minor the children who has have been placed for adoption with or voluntarily surrendered to the adoption entity them.~~ The provisions of s. 627.6578 shall remain in effect notwithstanding the guardianship provisions in this section.

(3) If a minor is surrendered to an intermediary for subsequent adoption and a suitable prospective adoptive home is not available pursuant to s. 63.092 at the time the minor is surrendered to the intermediary or, if the minor is a newborn admitted to a licensed hospital or birth center, at the time the minor is discharged from the hospital or birth center, the minor must be placed in foster care, ~~the intermediary shall be responsible for the child until such~~ a suitable prospective adoptive home is available.

(4) If a minor child is voluntarily surrendered to an adoption entity intermediary for subsequent adoption and the adoption does not become final within 180 days, the adoption entity intermediary must report to the court on the status of the minor child and the court may at that time proceed under s. 39.701 or take action reasonably necessary to protect the best interest of the minor child.

(5) The recital in the written consent given by the department that the minor child sought to be adopted has been permanently committed to the

department shall be prima facie proof of such commitment. The recital in the written consent given by a licensed child-placing agency or the declaration in an answer or recommendation filed by a licensed child-placing agency that the minor child has been permanently committed and the child-placing agency is duly licensed by the department shall be prima facie proof of such commitment and of such license.

(6) Unless otherwise authorized by law, the department is not responsible for expenses incurred by ~~other adoption entities licensed child-placing agencies or intermediaries~~ participating in placement of a minor child for the purposes of adoption.

(7) The court retains jurisdiction of a minor who has been placed for adoption until the adoption is final. After a minor is placed with an adoption entity or prospective adoptive parent, the court may review the status of the minor and the progress toward permanent adoptive placement. As part of this continuing jurisdiction, for good cause shown by a person whose consent to an adoption is required under s. 63.062, the adoption entity, the parents, persons having legal custody of the minor, persons with custodial or visitation rights to the minor, persons entitled to notice pursuant to the Uniform Child Custody Jurisdiction Act or the Indian Child Welfare Act, or upon the court's own motion, the court may review the appropriateness of the adoptive placement of the minor.

Section 13. Section 63.062, Florida Statutes, is amended to read:

63.062 Persons required to consent to adoption; affidavit of nonpaternity; waiver of venue.—

(1) Unless supported by one or more of the grounds enumerated under s. 63.089(3) consent is excused by the court, a petition to terminate parental rights pending adoption adopt a minor may be granted only if written consent has been executed as provided in s. 63.082 after the birth of the minor or notice has been served under s. 63.088 to by:

(a) The mother of the minor.

(b) The father of the minor, if:

1. The minor was conceived or born while the father was married to the mother;

2. The minor is his child by adoption; or;

3. The minor has been established by court proceeding to be his child.

(c) If there is no father as set forth in paragraph (b), any man established to be the father of the child by scientific tests that are generally acceptable within the scientific community to show a probability of paternity.

(d) If there is no father as set forth in paragraph (b) or paragraph (c), any man who the mother has reason to believe may be the father of the minor and who:

1.4. He Has acknowledged in writing, signed in the presence of a competent witness, that he is the father of the minor and has filed such acknowledgment with the Office of Vital Statistics of the Department of Health;

2.5. He Has provided, or has attempted to provide, the child or the mother during her pregnancy with support in a repetitive, customary manner; or-

3. Has been identified by the birth mother as a person she has reason to believe may be the father of the minor in an action to terminate parental rights pending adoption pursuant to this chapter.

(e) Any person who is a party in any pending proceeding in which paternity, custody, or termination of parental rights regarding the minor is at issue.

(f) Any father who has provided, or has attempted to provide, the child or the mother during her pregnancy with support in a repetitive, customary manner, if consent has been obtained under paragraph (1)(a) and subparagraph (1)(b)1.

(g)(e) The minor, if more than 12 years of age, unless the court in the best interest of the minor dispenses with the minor's consent.

(2) Any person whose consent is required under paragraph (1)(c) or paragraph (1)(d) may execute an affidavit of nonpaternity in lieu of a consent under this section and by doing so waives notice to all court proceedings after the date of execution. An affidavit of nonpaternity must be executed as provided in s. 63.082. The person executing the affidavit must receive disclosure under s. 63.085 prior to signing the affidavit.

(3) A person who signs a consent to adoption or an affidavit of nonpaternity must be given reasonable notice of his or her right to select a person who does not have an employment, professional, or personal relationship with the adoption entity or the prospective adoptive parents to be present when the consent to adoption or affidavit of nonpaternity is executed and to sign the consent or affidavit as a witness.

(4) An affidavit of nonpaternity must be in substantially the following form:

#### AFFIDAVIT OF NONPATERNITY

1. I have personal knowledge of the facts stated in this affidavit.
2. I have been told that .... has a child. I shall not establish or claim paternity for this child, whose name is .... and whose date of birth is .....
3. The child referenced in this affidavit was not conceived or born while the birth mother was married to me. I AM NOT MARRIED TO THE BIRTH MOTHER, nor do I intend to marry the birth mother.
4. With respect to the child referenced in this affidavit, I have not provided the birth mother with child support or prebirth support; I have not provided her with prenatal care or assisted her with medical expenses; I

have not provided the birth mother or her child or unborn child with support of any kind, nor do I intend to do so.

5. I have no interest in assuming the responsibilities of parenthood for this child. I will not acknowledge in writing that I am the father of this child or institute court proceedings to establish the child as mine.

6. I do not object to any decision or arrangements .... makes regarding this child, including adoption.

7. I have been told of my right to choose a person who does not have an employment, professional, or personal relationship with the adoption entity or the prospective adoptive parents to be present when this affidavit is executed and to sign it as a witness.

I WAIVE NOTICE OF ANY AND ALL PROCEEDINGS TO TERMINATE PARENTAL RIGHTS OR FINALIZE AN ADOPTION UNDER CHAPTER 63, FLORIDA STATUTES.

(5)(2) The court may require that consent be executed by:

(a) Any person lawfully entitled to custody of the minor; or

(b) The court having jurisdiction to determine custody of the minor, if the person having physical custody of the minor has no authority to consent to the adoption.

~~(6)(3) The petitioner must make good faith and diligent efforts as provided under s. 63.088 to notify, and obtain written consent from, the persons required to consent to adoption under this section within 60 days after filing the petition. These efforts may include conducting interviews and record searches to locate those persons, including verifying information related to location of residence, employment, service in the Armed Forces, vehicle registration in this state, and corrections records.~~

(7)(4) If parental rights to the minor have previously been terminated, a licensed child-placing agency, a child-caring agency registered under s. 409.176, or the department with which the minor child has been placed for subsequent adoption may provide consent to the adoption. In such case, no other consent is required.

(8)(5) A petition to adopt an adult may be granted if:

(a) Written consent to adoption has been executed by the adult and the adult's spouse, if any.

(b) Written consent to adoption has been executed by the birth parents, if any, or proof of service of process has been filed, showing notice has been served on the parents as provided in this chapter section.

(9)(a) In cases involving a child younger than 6 months of age in which venue for the termination of parental rights may be located in a county other than where the parent whose rights are to be terminated resides, the adoption entity must obtain, from any party executing an affidavit of nonpaternity or consent, a waiver of venue, which must be filed with the petition and must be in substantially the following form:



WAIVER OF VENUE

I understand that I have the right to require that the Petition to terminate my parental rights be filed in the county where I reside. I waive such right so that the Petition to Terminate Parental Rights may be filed by...(adoption entity)... in ...(county name)... county, Florida.

I understand that, after signing this waiver, I may object to the county where the proceedings to terminate my parental rights will be held by appearing at the hearing or by filing a written objection, on the attached form, with the Clerk of the Court who is located at ...(address of court).... If I later object to this transfer of venue, the case will be transferred to a county in Florida in which I reside if I intend to assert legally recognized grounds to contest a termination of parental rights. If I have no such residence, the case will be transferred to a county where another parent resides or where at least one parent resided at the time of signing a consent or affidavit of nonpaternity.

(b)1. The waiver of venue must be a separate document containing no consents, disclosures, or other information unrelated to venue.

2. Adoption entities must attach to the waiver of venue a form that the parent whose rights are to be terminated may use to request a transfer of venue for the proceeding. This form must contain the intended caption of the action for termination of parental rights and information identifying the child which will be sufficient for the clerk to properly file the form upon receipt.

3. This form must include a notice that if an adoption entity knows that a parent whose rights will be terminated intends to object to the termination but intentionally files the petition for termination of parental rights in a county which is not consistent with the required venue under such circumstances, the adoption entity shall be responsible for the attorney's fees of the parent contesting the transfer of venue.

Section 14. Section 63.082, Florida Statutes, is amended to read:

63.082 Execution of consent to adoption or affidavit of nonpaternity; family social and medical history; withdrawal of consent.—

(1) Consent to an adoption or an affidavit of nonpaternity shall be executed as follows:

(a) If by the person to be adopted, by oral or written statement in the presence of the court or by being acknowledged before a notary public.

(b) If by an agency, by affidavit from its authorized representative.

(c) If by any other person, in the presence of the court or by affidavit.

(d) If by a court, by an appropriate order or certificate of the court.

(2) A consent that does not name or otherwise identify the adopting parent is valid if the consent contains a statement by the person consenting

that the consent was voluntarily executed and that identification of the adopting parent is not required for granting the consent.

(3)(a) ~~The department must provide a consent form and a family social and medical history form to an adoption entity that intermediary who intends to place a child for adoption. The Forms containing, at a minimum, the same information as the forms promulgated by the department completed by the birth parents must be attached to the petition to terminate parental rights pending adoption and must contain such biological and sociological information, or such information as to the family medical history, regarding the minor child and the birth parents, as is required by the department. The information must be incorporated into the final home investigation report specified in s. 63.125. Each parent must~~ The court may also require that the birth mother be interviewed by a representative of the department, a licensed child-placing agency, or a licensed professional, pursuant to s. 63.092, before the consent is executed, unless the parent cannot be located or identified. A summary of each interview, or a statement that the parent is unlocated or unidentified, must be filed with the petition to terminate parental rights pending adoption and included in the final home investigation report filed under s. 63.125. The interview may be excused by the court for good cause.

(b) ~~Consent executed by the department, by a licensed child-placing agency, or by an appropriate order or certificate of the court if executed under s. 63.062(5)(b) must be attached to the petition to terminate parental rights pending adoption and must be accompanied by a family medical history that includes such information concerning the medical history of the child and the birth parents as is available or readily obtainable.~~

(c) If any required consent or social and medical history is unavailable because the person whose consent is required cannot be located or identified, the petition to terminate parental rights pending adoption must be accompanied by the affidavit of diligent search required under s. 63.088.

(4)(a) ~~The consent to an adoption or affidavit of nonpaternity shall not for voluntary surrender must be executed before after the birth of the minor.~~

(b) A consent to the adoption of a minor who is to be placed for adoption with identified prospective adoptive parents under s. 63.052, upon the minor's release from a licensed hospital or birth center following birth, shall not be executed sooner than 48 hours after the minor's birth or the day the birth mother has been notified in writing, either on her patient chart or in release paperwork, that she is fit to be released from a licensed hospital or birth center, whichever is earlier. A consent executed under this paragraph is valid upon execution and may be withdrawn only if the court finds that it was obtained by fraud or under duress. The waiting period provided in this paragraph does not apply in any case in which the revocation period in paragraph (4)(c) applies.

(c) When the minor to be adopted is not placed pursuant to s. 63.052 upon the minor's release from a licensed hospital or birth center following birth, the consent to adoption may be executed at any time after the birth of the minor. While such consent is valid upon execution, it is subject to the 3-day

revocation period under subsection (7) or may be revoked at any time prior to the placement of the minor with the prospective adoptive parents, whichever is later. If a consent has been executed, this subsection may not be construed to provide a birth parent with more than 3 days to revoke that consent once the child has been placed with the prospective adoptive parents. The revocation period provided in this paragraph does not apply in any case in which the waiting period in paragraph (4)(b) applies.

(d) The consent to adoption or the affidavit of nonpaternity must be signed ~~child~~, in the presence of two witnesses, and be acknowledged before a notary public who is not signing as one of the witnesses. The notary public must legibly note on the consent or the affidavit the date and time of execution. The witnesses' names must be typed or printed underneath their signatures. The witnesses', ~~and their~~ home or business addresses and social security numbers, driver's license numbers, or state identification card numbers must be included. The absence of a social security number, driver's license number, or state identification card number shall not be deemed to invalidate the consent. The person who signs the consent or the affidavit has the right to have at least one of the witnesses be an individual who does not have an employment, professional, or personal relationship with the adoption entity or the prospective adoptive parents. The adoption entity must give reasonable notice to the person signing the consent or affidavit of the right to select a witness of his or her own choosing. The person who signs the consent or affidavit must acknowledge in writing on the consent or affidavit that such notice was given and indicate the witness, if any, who was selected by the person signing the consent or affidavit. The adoption entity must include its name, address, and telephone number on the consent to adoption or affidavit of nonpaternity.

(e) A consent to adoption must contain, in at least 16-point boldfaced type, an acknowledgment of the parent's rights in substantially the following form:

#### CONSENT TO ADOPTION

YOU HAVE THE RIGHT TO SELECT AT LEAST ONE PERSON WHO DOES NOT HAVE AN EMPLOYMENT, PROFESSIONAL, OR PERSONAL RELATIONSHIP WITH THE ADOPTION ENTITY OR THE PROSPECTIVE ADOPTIVE PARENTS TO BE PRESENT WHEN THIS AFFIDAVIT IS EXECUTED AND TO SIGN IT AS A WITNESS. YOU MUST ACKNOWLEDGE ON THIS FORM THAT YOU WERE NOTIFIED OF THIS RIGHT AND YOU MUST INDICATE THE WITNESS OR WITNESSES YOU SELECTED, IF ANY.

YOU DO NOT HAVE TO SIGN THIS CONSENT FORM. YOU MAY DO ANY OF THE FOLLOWING INSTEAD OF SIGNING THIS CONSENT OR BEFORE SIGNING THIS CONSENT:

1. CONSULT WITH AN ATTORNEY;
2. HOLD, CARE FOR, AND FEED THE CHILD;
3. PLACE THE CHILD IN FOSTER CARE OR WITH ANY FRIEND OR FAMILY MEMBER YOU CHOOSE WHO IS WILLING TO CARE FOR THE CHILD;

4. TAKE THE CHILD HOME UNLESS OTHERWISE LEGALLY PROHIBITED; AND

5. FIND OUT ABOUT THE COMMUNITY RESOURCES THAT ARE AVAILABLE TO YOU IF YOU DO NOT GO THROUGH WITH THE ADOPTION.

IF YOU DO SIGN THIS CONSENT, YOU ARE GIVING UP ALL RIGHTS TO YOUR CHILD. YOUR CONSENT IS VALID AND BINDING UNLESS WITHDRAWN AS PERMITTED BY LAW. IF YOU ARE GIVING UP YOUR RIGHTS TO A CHILD WHO IS TO BE PLACED FOR ADOPTION WITH IDENTIFIED PROSPECTIVE ADOPTIVE PARENTS UPON THE CHILD'S RELEASE FROM A LICENSED HOSPITAL OR BIRTH CENTER FOLLOWING BIRTH, A WAITING PERIOD WILL BE IMPOSED BEFORE YOU MAY SIGN THE CONSENT FOR ADOPTION. YOU MUST WAIT 48 HOURS FROM THE TIME OF BIRTH, OR UNTIL THE BIRTH MOTHER HAS BEEN NOTIFIED IN WRITING, EITHER ON HER PATIENT CHART OR IN RELEASE PAPERS, THAT SHE IS FIT TO BE RELEASED FROM A LICENSED HOSPITAL OR BIRTH CENTER, WHICHEVER IS SOONER, BEFORE YOU MAY SIGN THE CONSENT FOR ADOPTION. ONCE YOU HAVE SIGNED THE CONSENT, IT IS VALID AND BINDING AND CANNOT BE WITHDRAWN UNLESS A COURT FINDS THAT IT WAS OBTAINED BY FRAUD OR UNDER DURESS.

IF YOU ARE GIVING UP YOUR RIGHTS TO A CHILD WHO IS NOT PLACED FOR ADOPTION UPON THE CHILD'S RELEASE FROM A LICENSED HOSPITAL OR BIRTH CENTER FOLLOWING BIRTH, YOU MAY SIGN THE CONSENT AT ANY TIME AFTER THE BIRTH OF THE CHILD. WHILE THE CONSENT IS VALID AND BINDING WHEN SIGNED, YOU HAVE TIME TO CHANGE YOUR MIND. THIS TIME IS CALLED THE REVOCATION PERIOD. WHEN THE REVOCATION PERIOD APPLIES, YOU MAY WITHDRAW YOUR CONSENT FOR ANY REASON AT ANY TIME PRIOR TO THE PLACEMENT OF THE CHILD WITH THE PROSPECTIVE ADOPTIVE PARENTS, OR IF YOU DO IT WITHIN 3 BUSINESS DAYS AFTER THE DATE YOU SIGNED THE CONSENT OR 1 BUSINESS DAY AFTER THE DATE OF THE BIRTH MOTHER'S DISCHARGE FROM A LICENSED HOSPITAL OR BIRTH CENTER, WHICHEVER IS LATER.

TO WITHDRAW YOUR CONSENT DURING THE REVOCATION PERIOD, YOU MUST:

1. NOTIFY THE ADOPTION ENTITY, BY WRITING A LETTER, THAT YOU ARE WITHDRAWING YOUR CONSENT.

2. MAIL THE LETTER AT A UNITED STATES POST OFFICE WITHIN 3 BUSINESS DAYS AFTER THE DATE YOU SIGNED THE CONSENT OR 1 BUSINESS DAY AFTER THE DATE OF THE BIRTH MOTHER'S DISCHARGE FROM A LICENSED HOSPITAL OR BIRTH CENTER, WHICHEVER IS LATER. THE TERM "BUSINESS DAY" MEANS ANY DAY ON WHICH THE UNITED STATES POSTAL SERVICE ACCEPTS CERTIFIED MAIL FOR DELIVERY.

3. SEND THE LETTER BY CERTIFIED UNITED STATES MAIL WITH RETURN RECEIPT REQUESTED.

4. PAY POSTAL COSTS AT THE TIME YOU MAIL THE LETTER.

5. KEEP THE CERTIFIED MAIL RECEIPT AS PROOF THAT CONSENT WAS WITHDRAWN IN A TIMELY MANNER.

TO WITHDRAW YOUR CONSENT PRIOR TO THE PLACEMENT OF THE CHILD WITH THE PROSPECTIVE ADOPTIVE PARENTS, YOU MUST NOTIFY THE ADOPTION ENTITY, IN WRITING BY CERTIFIED UNITED STATES MAIL, RETURN RECEIPT REQUESTED. THE ADOPTION ENTITY YOU SHOULD NOTIFY IS: ...(name of adoption entity)..., ...(address of adoption entity)..., ...(phone number of adoption entity)....

ONCE THE REVOCATION PERIOD IS OVER, OR THE CHILD HAS BEEN PLACED WITH THE PROSPECTIVE ADOPTIVE PARENTS, WHICHEVER OCCURS LATER, YOU MAY NOT WITHDRAW YOUR CONSENT UNLESS YOU CAN PROVE IN COURT THAT CONSENT WAS OBTAINED BY FRAUD OR UNDER DURESS.

(5) Before any consent to adoption or affidavit of nonpaternity is executed by a parent, but after the birth of the minor, all requirements of disclosure under s. 63.085 must be met.

(6) A copy of each consent signed in an action for termination of parental rights pending adoption must be provided to the person who executed the consent to adoption. The copy must be hand delivered, with a written acknowledgment of receipt signed by the person whose consent is required, or mailed by first class United States mail to the address of record in the court file. If a copy of a consent cannot be provided as required in this subsection, the adoption entity must execute an affidavit stating why the copy of the consent is undeliverable. The original consent and acknowledgment of receipt, an acknowledgment of mailing by the adoption entity, or an affidavit stating why the copy of the consent is undeliverable must be filed with the petition for termination of parental rights pending adoption.

(7)(a) A consent that is being withdrawn under paragraph (4)(c) may be withdrawn at any time prior to the minor's placement with the prospective adoptive parents or by notifying the adoption entity in writing by certified United States mail, return receipt requested, not later than 3 business days after execution of the consent or 1 business day after the date of the birth mother's discharge from a licensed hospital or birth center, whichever occurs later. As used in this subsection, the term "business day" means any day on which the United States Postal Service accepts certified mail for delivery.

(b) Upon receiving written notice from a person of that person's desire to withdraw consent to adoption, the adoption entity must contact the prospective adoptive parent to arrange a time certain for the adoption entity to regain physical custody of the minor, unless, upon a motion for emergency hearing by the adoption entity, the court determines in written findings that placement of the minor with the person withdrawing consent may endanger the minor.

(c) If the court finds that such placement may endanger the minor, the court must enter an order regarding continued placement of the minor. The order shall include, but not be limited to, whether temporary placement in foster care is appropriate, whether an investigation by the department is recommended, and whether a relative within the third degree is available for the temporary placement.

(d) If the person withdrawing consent claims to be the father of the minor but has not been established to be the father by marriage, court order, or scientific testing, the court may order scientific paternity testing and reserve ruling on removal of the minor until the results of such testing have been filed with the court.

(e) The adoption entity must return the minor within 3 days after notification of the withdrawal of consent or after the court determines that withdrawal is valid and binding upon consideration of an emergency motion, as filed pursuant to paragraph (b), to the physical custody of the person withdrawing consent.

(f) Following the revocation period for withdrawal of consent described in paragraph (a), or the placement of the child with the prospective adoptive parents, whichever occurs later, consent may be withdrawn only when the court finds that the consent was obtained by fraud or under duress.

(g) An affidavit of nonpaternity may be withdrawn only if the court finds that the affidavit was obtained by fraud or under duress.

Section 15. Section 63.085, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 63.085, F.S., for present text.)

63.085 Disclosure by adoption entity.—

(1) DISCLOSURE REQUIRED TO PARENTS AND PROSPECTIVE ADOPTIVE PARENTS.—Not later than 7 days after a person seeking to adopt a minor or a person seeking to place a minor for adoption contacts an adoption entity in person or provides the adoption entity with a mailing address, the entity must provide a written disclosure statement to that person if the entity agrees or continues to work with such person. If an adoption entity is assisting in the effort to terminate the parental rights of a parent who did not initiate the contact with the adoption entity, the written disclosure must be provided within 7 days after that parent is identified and located. For purposes of providing the written disclosure, a person is considered to be seeking to place a minor for adoption when that person has sought information or advice from the adoption entity regarding the option of adoptive placement. The written disclosure statement must be in substantially the following form:

#### ADOPTION DISCLOSURE

THE STATE OF FLORIDA REQUIRES THAT THIS FORM BE PROVIDED TO ALL PERSONS CONSIDERING ADOPTING A MINOR OR SEEKING TO PLACE A MINOR FOR ADOPTION, TO ADVISE THEM

OF THE FOLLOWING FACTS REGARDING ADOPTION UNDER FLORIDA LAW:

1. Under section 63.102, Florida Statutes, the existence of a placement or adoption contract signed by the parent or prospective adoptive parent, prior approval of that contract by the court, or payment of any expenses permitted under Florida law does not obligate anyone to sign a consent or ultimately place a minor for adoption.

2. Under sections 63.092 and 63.125, Florida Statutes, a favorable preliminary home study, before the minor may be placed in that home, and a final home investigation, before the adoption becomes final, must be completed.

3. Under section 63.082, Florida Statutes, a consent to adoption or affidavit of nonpaternity may not be signed until after the birth of the minor.

4. Under section 63.082, Florida Statutes, if the minor is to be placed for adoption with identified prospective adoptive parents upon release from a licensed hospital or birth center following birth, the consent to adoption may not be signed until 48 hours after birth or until the day the birth mother has been notified in writing, either on her patient chart or in release papers, that she is fit to be released from the licensed hospital or birth center, whichever is sooner. The consent to adoption or affidavit of nonpaternity is valid and binding upon execution unless the court finds it was obtained by fraud or under duress.

5. Under section 63.082, Florida Statutes, if the minor is not placed for adoption with the prospective adoptive parent upon release from the hospital or birth center following birth, a 3-day revocation period applies during which consent may be withdrawn for any reason by notifying the adoption entity in writing. In order to withdraw consent, the written withdrawal of consent must be mailed at a United States Post Office no later than 3 business days after execution of the consent or 1 business day after the date of the birth mother's discharge from a licensed hospital or birth center, whichever occurs later. For purposes of mailing the withdrawal of consent, the term "business day" means any day on which the United States Postal Service accepts certified mail for delivery. The letter must be sent by certified United States mail, return receipt requested. Postal costs must be paid at the time of mailing and the receipt should be retained as proof that consent was withdrawn in a timely manner.

6. Under section 63.082, Florida Statutes, and notwithstanding the revocation period, the consent may be withdrawn at any time prior to the placement of the child with the prospective adoptive parent, by notifying the adoption entity in writing by certified United States mail, return receipt requested.

7. Under section 63.082, Florida Statutes, if an adoption entity timely receives written notice from a person of that person's desire to withdraw consent, the adoption entity must contact the prospective adoptive parent to arrange a time certain to regain physical custody of the child. Absent a court order for continued placement of the child entered under section 63.082, Florida Statutes, the adoption entity must return the minor within 3 days after notification of the withdrawal of consent to the physical custody

of the person withdrawing consent. After the revocation period for withdrawal of consent ends, or after the placement of the child with prospective adoptive parent, whichever occurs later, the consent may be withdrawn only if the court finds that the consent was obtained by fraud or under duress.

8. Under section 63.082, Florida Statutes, an affidavit of nonpaternity, once executed, may be withdrawn only if the court finds that it was obtained by fraud or under duress.

9. Under section 63.082, Florida Statutes, a person who signs a consent to adoption or an affidavit of nonpaternity must be given reasonable notice of his or her right to select a person who does not have an employment, professional, or personal relationship with the adoption entity or the prospective adoptive parents to be present when the consent or affidavit is executed and to sign the consent or affidavit as a witness.

10. Under section 63.088, Florida Statutes, specific and extensive efforts are required by law to attempt to obtain the consents required under section 63.062, Florida Statutes. If these efforts are unsuccessful, the court may not enter a judgment terminating parental rights pending adoption until certain requirements have been met.

11. Under Florida law, an intermediary may represent the legal interests of only the prospective adoptive parents. Each person whose consent to an adoption is required under section 63.062, Florida Statutes, is entitled to seek independent legal advice and representation before signing any document or surrendering parental rights.

12. Under section 63.182, Florida Statutes, 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 pending adoption, on any ground, including duress but excluding fraud, must be filed within 1 year after entry of the judgment terminating parental rights pending adoption. Such an action or proceeding for fraud must be filed within 2 years after entry of the judgment terminating parental rights.

13. Under section 63.089, Florida Statutes, 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 any 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 to exercise his or her parental rights. The motion must be filed with the court that originally entered the judgment. The motion must be filed within a reasonable time, but not later than 2 years after the date the judgment to which the motion is directed was entered.

14. Under section 63.165, Florida Statutes, the State of Florida maintains a registry of adoption information. Information about the registry is available from the Department of Children and Family Services.

15. Under section 63.032, Florida Statutes, a court may find that a parent has abandoned his or her child based on conduct during the pregnancy or based on conduct after the child is born. In addition, under section 63.089, Florida Statutes, the failure of a parent to respond to notices of proceedings involving his or her child shall result in termination of parental rights of a



parent. A lawyer can explain what a parent must do to protect his or her parental rights. Any parent wishing to protect his or her parental rights should act IMMEDIATELY.

16. Each parent and prospective adoptive parent is entitled to independent legal advice and representation. Attorney information may be obtained from the yellow pages, The Florida Bar's lawyer referral service, and local legal aid offices and bar associations.

17. Counseling services may be helpful while making a parenting decision. Consult the yellow pages of the telephone directory.

18. Medical and social services support is available if the parent wishes to retain parental rights and responsibilities. Consult the Department of Children and Family Services.

19. Under section 63.039, Florida Statutes, an adoption entity has certain legal responsibilities and may be liable for damages to persons whose consent to an adoption is required or to prospective adoptive parents for failing to materially meet those responsibilities. Damages may also be recovered from an adoption entity if a consent to adoption or affidavit of nonpaternity is obtained by fraud or under duress attributable to an adoption entity.

20. Under section 63.097, Florida Statutes, reasonable living expenses of the birth mother may be paid by the prospective adoptive parents and the adoption entity only if the birth mother is unable to pay due to unemployment, underemployment, or disability. The law also allows payment of reasonable and necessary medical expenses, expenses necessary to comply with the requirements of chapter 63, Florida Statutes, court filing expenses, and costs associated with advertising. Certain documented legal, counseling, and other professional fees may be paid. Prior approval of the court is not required until the cumulative total of amounts permitted exceeds \$2,500 in legal or other fees, \$500 in court costs, \$3,000 in expenses, or \$1,500 in cumulative expenses incurred prior to the date the prospective adoptive parent retains the adoption entity. The following fees, costs, and expenses are prohibited:

a. Any fee or expense that constitutes payment for locating a minor for adoption.

b. Any lump-sum payment to the entity which is nonrefundable directly to the payor or which is not itemized on the affidavit.

c. Any fee on the affidavit which does not specify the service that was provided and for which the fee is being charged, such as a fee for facilitation or acquisition.

The court may reduce amounts charged or refund amounts that have been paid if it finds that these amounts were more than what was reasonable or allowed under the law.

21. Under section 63.132, Florida Statutes, the adoption entity and the prospective adoptive parents must sign and file with the court a written statement under oath listing all the fees, expenses, and costs made, or agreed to be made, by or on behalf of the prospective adoptive parents and any adoption entity in connection with the adoption. The affidavit must

state whether any of the expenses were eligible to be paid for by any other source.

22. Under section 63.132, Florida Statutes, the court order approving the money spent on the adoption must be separate from the judgment making the adoption final. The court may approve only certain costs and expenses allowed under section 63.097, Florida Statutes. The court may approve only fees that are allowed under law and that it finds to be "reasonable." A good idea of what is and is not allowed to be paid for in an adoption can be determined by reading sections 63.097 and 63.132, Florida Statutes.

(2) ACKNOWLEDGMENT OF DISCLOSURE.—The adoption entity must obtain a written statement acknowledging receipt of the disclosure required under subsection (1) and signed by the persons receiving the disclosure or, if it is not possible to obtain such an acknowledgment, the adoption entity must execute an affidavit stating why an acknowledgment could not be obtained. If the disclosure was delivered by certified United States mail, return receipt requested, a return receipt signed by the person from whom acknowledgment is required is sufficient to meet the requirements of this subsection. A copy of the acknowledgment of receipt of the disclosure must be provided to the person signing it. A copy of the acknowledgment or affidavit executed by the adoption entity in lieu of the acknowledgment must be maintained in the file of the adoption entity. The original acknowledgment or affidavit must be filed with the court. In the case of a disclosure provided under subsection (1), the original acknowledgment or affidavit must be included in the preliminary home study required in s. 63.092.

(3) POSTBIRTH DISCLOSURE TO PARENTS.—Before execution of any consent to adoption by a parent, but after the birth of the minor, all requirements of subsections (1) and (2) for making certain disclosures to a parent and obtaining a written acknowledgment of receipt must be repeated.

(4) REVOCATION OF CONSENT.—Failure to meet the requirements of subsections (1)-(3) does not constitute grounds for revocation of a consent to adoption or withdrawal of an affidavit of nonpaternity unless the extent and circumstances of such a failure result in a material failure of fundamental fairness in the administration of due process, or the failure constitutes or contributes materially to fraud or duress in obtaining a consent to adoption or affidavit of nonpaternity.

Section 16. Section 63.087, Florida Statutes, is created to read:

63.087 Proceeding to terminate parental rights pending adoption; general provisions.—

(1) INTENT.—It is the intent of the Legislature that a court determine whether a minor is legally available for adoption through a separate proceeding terminating parental rights prior to the filing of a petition for adoption.

(2) GOVERNING RULES.—The Florida Family Law Rules of Procedure govern a proceeding to terminate parental rights pending adoption unless otherwise provided by law.

(3) JURISDICTION.—A court of this state which is competent to decide child welfare or custody matters has jurisdiction to hear all matters arising from a proceeding to terminate parental rights pending adoption. All subsequent proceedings for the adoption of the minor, if the petition for termination is granted, must be conducted by the same judge who conducted the termination proceedings, if that judge is still available within the division of the court which conducts termination or adoption cases or, if that judge is unavailable, by another judge within the division.

(4) VENUE.—

(a) A petition to terminate parental rights pending adoption must be filed:

1. In the county where the child resided for the previous 6 months;

2. If the child is younger than 6 months of age or has not continuously resided in one county for the previous 6 months, in the county where the parent resided at the time of the execution of the consent to adoption or the affidavit of nonpaternity;

3. If the child is younger than 6 months of age and a waiver of venue has been obtained pursuant to s. 63.062 in the county where the adoption entity is located or, if the adoption entity has more than one place of business, in the county which is located in closest proximity to the county in which the parent whose rights are to be terminated resided at the time of execution of the consent or affidavit of nonpaternity;

4. If there is no consent or affidavit of nonpaternity executed by a parent, in the county where the birth mother resides; or

5. If neither parent resides in the state, in the county where the adoption entity is located.

(b) If a petition for termination of parental rights has been filed and a parent whose rights are to be terminated objects to venue, there must be a hearing in which the court shall determine whether that parent intends to assert legally recognized grounds to contest a termination of parental rights and, if so, the court shall immediately transfer venue to the county where that parent resides, if there is such a county, or, if not, a county where:

1. At least one parent whose rights are to be terminated resides;

2. At least one parent resided at the time of execution of a consent or affidavit of nonpaternity; or

3. The adoption entity is located, if neither subparagraph 1. nor subparagraph 2. applies.

For purposes of selecting venue, the court shall consider the ease of access to the court for the parent who intends to contest a termination of parental rights.

(c) If there is a transfer of venue, the adoption entity or the petitioner must bear the cost of venue transfer.

For purposes of the hearing under this subsection, witnesses located in another jurisdiction may testify by deposition or testify by telephone, audio-visual means, or other electronic means before a designated court or at another location. Documentary evidence transmitted from another location by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the means of transmission. The court on its own motion may otherwise prescribe the manner in which and the terms upon which the testimony is taken.

(5) PREREQUISITE FOR ADOPTION.—A petition for adoption may not be filed until 30 days after the date the judge signed the judgment terminating parental rights pending adoption under this chapter, unless the adoptee is an adult or the minor has been the subject of a judgment terminating parental rights under chapter 39.

(6) PETITION.—

(a) A proceeding seeking to terminate parental rights pending adoption pursuant to this chapter must be initiated by the filing of an original petition after the birth of the minor.

(b) The petition may be filed by a parent or person having legal custody of the minor. The petition may be filed by an adoption entity only if a parent or person having legal custody who has executed a consent to adoption pursuant to s. 63.082 consents in writing to the entity filing the petition. The original of such consent must be filed with the petition.

(c) The petition must be entitled: “In the Matter of the Termination of Parental Rights for the Proposed Adoption of a Minor Child.”

(d) A petition to terminate parental rights must be consolidated with a previously filed petition for a declaratory statement filed under s. 63.102. Only one filing fee may be assessed for both the termination of parental rights and declaratory statement petitions.

(e) The petition to terminate parental rights pending adoption must be in writing and signed by the petitioner under oath stating the petitioner’s good faith in filing the petition. A written consent to adoption, affidavit of nonpaternity, or affidavit of diligent search under s. 63.088, for each person whose consent to adoption is required under s. 63.062, must be executed and attached.

(f) The petition must include:

1. The minor’s name, gender, date of birth, and place of birth. The petition must contain all names by which the minor is or has been known, excluding the minor’s prospective adoptive name but including the minor’s legal name at the time of the filing of the petition, to allow interested parties to the action, including parents, persons having legal custody of the minor, persons with custodial or visitation rights to the minor, and persons entitled

to notice pursuant to the Uniform Child Custody Jurisdiction Act or the Indian Child Welfare Act, to identify their own interest in the action.

2. If the petition is filed before the day the minor is 6 months old and if the identity or location of the father is unknown, each city in which the mother resided or traveled, in which conception may have occurred, during the 12 months before the minor's birth, including the county and state in which that city is located.

3. Unless a consent to adoption or affidavit of nonpaternity executed by each person whose consent is required under s. 63.062 is attached to the petition, the name and the city of residence, including the county and state in which that city is located, of:

a. The minor's mother;

b. Any man who the mother reasonably believes may be the minor's father; and

c. Any person who has legal custody, as defined in s. 39.01, of the minor.

If a required name or address is not known, the petition must so state.

4. All information required by the Uniform Child Custody Jurisdiction Act and the Indian Child Welfare Act.

5. A statement of the grounds under s. 63.089 upon which the petition is based.

6. The name, address, and telephone number of any adoption entity seeking to place the minor for adoption.

7. The name, address, and telephone number of the division of the circuit court in which the petition is to be filed.

8. A certification of compliance with the requirements of s. 63.0425 regarding notice to grandparents of an impending adoption.

(7) ANSWER NOT REQUIRED.—An answer to the petition or any pleading need not be filed by any minor, parent, or person having legal custody of the minor, but any matter that might be set forth in an answer or other pleading may be pleaded orally before the court or filed in writing. However, failure to file a written response or to appear at the hearing on the petition constitutes grounds upon which the court may terminate parental rights. Notwithstanding the filing of any answer or any pleading, any person present at the hearing to terminate parental rights pending adoption whose consent to adoption is required under s. 63.062 must:

(a) Be advised by the court that he or she has a right to ask that the hearing be reset for a later date so that the person may consult with an attorney;

(b) Be given an opportunity to deny the allegations in the petition; and

(c) Be given the opportunity to challenge the validity of any consent or affidavit of nonpaternity signed by any person.

Section 17. Section 63.088, Florida Statutes, is created to read:

63.088 Proceeding to terminate parental rights pending adoption; notice and service; diligent search.—

(1) INITIATE LOCATION AND IDENTIFICATION PROCEDURES.—When the location or identity of a person whose consent to an adoption is required but is not known, the adoption entity must begin the inquiry and diligent search process required by this section not later than 7 days after the date on which the person seeking to place a minor for adoption has evidenced in writing to the entity a desire to place the minor for adoption with that entity, or not later than 7 days after the date any money is provided as permitted under this chapter by the adoption entity for the benefit of the person seeking to place a minor for adoption.

(2) LOCATION AND IDENTITY KNOWN.—Before the court may determine that a minor is available for adoption, and in addition to the other requirements set forth in this chapter, each person whose consent is required under s. 63.062, who has not executed an affidavit of nonpaternity, and whose location and identity have been determined by compliance with the procedures in this section must be personally served, pursuant to chapter 48, at least 30 days before the hearing with a copy of the petition to terminate parental rights pending adoption and with notice in substantially the following form:

NOTICE OF PETITION AND HEARING  
TO TERMINATE PARENTAL RIGHTS PENDING ADOPTION

A petition to terminate parental rights pending adoption has been filed. A copy of the petition is being served with this notice. There will be a hearing on the petition to terminate parental rights pending adoption on .... (date) .... at .... (time) .... before .... (judge) .... at .... (location, including complete name and street address of the courthouse) ..... The court has set aside .... (amount of time) .... for this hearing. If you executed a consent to adoption or an affidavit of nonpaternity and a waiver of venue, you have the right to request that the hearing on the petition to terminate parental rights be transferred to the county in which you reside. You may object by appearing at the hearing or filing a written objection with the court.

UNDER SECTION 63.089, FLORIDA STATUTES, FAILURE TO FILE A WRITTEN RESPONSE TO THIS NOTICE WITH THE COURT OR TO APPEAR AT THIS HEARING CONSTITUTES GROUNDS UPON WHICH THE COURT SHALL END ANY PARENTAL RIGHTS YOU MAY HAVE REGARDING THE MINOR CHILD.

(3) REQUIRED INQUIRY.—In proceedings initiated under s. 63.087, the court must conduct an inquiry of the person who is placing the minor for adoption and of any relative or person having legal custody of the minor who is present at the hearing and likely to have the following information regarding the identity of:

(a) Any person to whom the mother of the minor was married at any time when conception of the minor may have occurred or at the time of the birth of the minor;

(b) Any person who has been declared by a court to be the father of the minor;

(c) Any man with whom the mother was cohabiting at any time when conception of the minor may have occurred;

(d) Any person the mother has reason to believe may be the father and from whom she has received payments or promises of support with respect to the minor or because of her pregnancy;

(e) Any person the mother has named as the father on the birth certificate of the minor or in connection with applying for or receiving public assistance;

(f) Any person who has acknowledged or claimed paternity of the minor; and

(g) Any person the mother has reason to believe may be the father.

The information required under this subsection may be provided to the court in the form of a sworn affidavit by a person having personal knowledge of the facts, addressing each inquiry enumerated in this subsection, except that, if the inquiry identifies a father under paragraph (a) or paragraph (b), the inquiry shall not continue further. The inquiry required under this subsection may be conducted before the birth of the minor.

(4) LOCATION UNKNOWN; IDENTITY KNOWN.—If the inquiry by the court under subsection (3) identifies any person whose consent to adoption is required under s. 63.062 and who has not executed a consent to adoption or an affidavit of nonpaternity, and the location of the person from whom consent is required is unknown, the adoption entity must conduct a diligent search for that person which must include inquiries concerning:

(a) The person's current address, or any previous address, through an inquiry of the United States Postal Service through the Freedom of Information Act;

(b) The last known employment of the person, including the name and address of the person's employer. Inquiry should be made of the last known employer as to any address to which wage and earnings statements (W-2 forms) of the person have been mailed. Inquiry should be made of the last known employer as to whether the person is eligible for a pension or profit-sharing plan and any address to which pension or other funds have been mailed;

(c) Regulatory agencies, including those regulating licensing in the area where the person last resided;

(d) Names and addresses of relatives to the extent such can be reasonably obtained from the petitioner or other sources, contacts with those rela-

tives, and inquiry as to the person's last known address. The petitioner shall pursue any leads of any addresses to which the person may have moved. Relatives include, but are not limited to, parents, brothers, sisters, aunts, uncles, cousins, nieces, nephews, grandparents, great-grandparents, former or current in-laws, stepparents, and stepchildren;

(e) Information as to whether or not the person may have died and, if so, the date and location;

(f) Telephone listings in the area where the person last resided;

(g) Inquiries of law enforcement agencies in the area where the person last resided;

(h) Highway patrol records in the state where the person last resided;

(i) Department of Corrections records in the state where the person last resided;

(j) Hospitals in the area where the person last resided;

(k) Records of utility companies, including water, sewer, cable television, and electric companies, in the area where the person last resided;

(l) Records of the Armed Forces of the United States as to whether there is any information as to the person;

(m) Records of the tax assessor and tax collector in the area where the person last resided;

(n) Search of one Internet databank locator service; and

(o) Information held by all medical providers who rendered medical treatment or care to the birth mother and child, including the identity and location information of all persons listed by the mother as being financially responsible for the uninsured expenses of treatment or care and all persons who made any such payments.

Any person contacted by a petitioner or adoption entity who is requesting information pursuant to this subsection must release the requested information to the petitioner or adoption entity, except when prohibited by law, without the necessity of a subpoena or court order. An affidavit of diligent search executed by the petitioner and the adoption entity must be filed with the court confirming completion of each aspect of the diligent search enumerated in this subsection and specifying the results. The diligent search required under this subsection may be conducted before the birth of the minor.

(5) LOCATION UNKNOWN OR IDENTITY UNKNOWN.—This subsection only applies if, as to any person whose consent is required under s. 63.062 and who has not executed an affidavit of nonpaternity, the location or identity of the person is unknown and the inquiry under subsection (3) fails to identify the person or the diligent search under subsection (4) fails



to locate the person. The unlocated or unidentified person must be served notice under subsection (2) by constructive service in the manner provided in chapter 49 in each county identified in the petition, as provided in s. 63.087(6). The notice, in addition to all information required in the petition under s. 63.087(6) and chapter 49, must contain a physical description, including, but not limited to, age, race, hair and eye color, and approximate height and weight of the minor's mother and of any person the mother reasonably believes may be the father; the minor's date of birth; and any date and city, including the county and state in which the city is located, in which conception may have occurred. If any of the facts that must be included in the notice under this subsection are unknown and cannot be reasonably ascertained, the notice must so state.

Section 18. Section 63.089, Florida Statutes, is created to read:

63.089 Proceeding to terminate parental rights pending adoption; hearing; grounds; dismissal of petition; judgment.—

(1) HEARING.—The court may terminate parental rights pending adoption only after a full evidentiary hearing.

(2) HEARING PREREQUISITES.—The court may hold the hearing only when:

(a) For each person whose consent to adoption is required under s. 63.062:

1. A consent under s. 63.082 has been executed and filed with the court;
2. An affidavit of nonpaternity under s. 63.082 has been executed and filed with the court; or
3. Notice has been provided under ss. 63.087 and 63.088;

(b) For each notice and petition that must be served under ss. 63.087 and 63.088:

1. At least 30 days have elapsed since the date of personal service and an affidavit of service has been filed with the court;
2. At least 60 days have elapsed since the first date of publication of constructive service and an affidavit of service has been filed with the court; or
3. An affidavit of nonpaternity which affirmatively waives service has been executed and filed with the court;

(c) The minor named in the petition has been born; and

(d) The petition contains all information required under s. 63.087 and all affidavits of inquiry, diligent search, and service required under s. 63.088 have been obtained and filed with the court.

(3) GROUNDS FOR TERMINATING PARENTAL RIGHTS PENDING ADOPTION.—The court may enter a judgment terminating parental rights

pending adoption if the court determines by clear and convincing evidence, supported by written findings of fact, that each person whose consent to adoption is required under s. 63.062:

(a) Has executed a valid consent that has not been withdrawn under s. 63.082 and the consent was obtained according to the requirements of this chapter;

(b) Has executed an affidavit of nonpaternity and the affidavit was obtained according to the requirements of this chapter;

(c) Has been properly served notice of the proceeding in accordance with the requirements of this chapter and has failed to file a written answer or appear at the evidentiary hearing resulting in the judgment terminating parental rights pending adoption;

(d) Has been properly served notice of the proceeding in accordance with the requirements of this chapter and has been determined under subsection (4) to have abandoned the minor as defined in s. 63.032;

(e) Is a parent of the person to be adopted, which parent has been judicially declared incapacitated with restoration of competency found to be medically improbable;

(f) Is a person who has legal custody of the person to be adopted, other than a parent, who has failed to respond in writing to a request for consent for a period of 60 days or, after examination of his or her written reasons for withholding consent, is found by the court to be withholding his or her consent unreasonably;

(g) Has been properly served notice of the proceeding in accordance with the requirements of this chapter, but has been found by the court, after examining written reasons for the withholding of consent, to be unreasonably withholding his or her consent; or

(h) Is the spouse of the person to be adopted who has failed to consent, and the failure of the spouse to consent to the adoption is excused by reason of prolonged and unexplained absence, unavailability, incapacity, or circumstances that are found by the court to constitute unreasonable withholding of consent.

(4) FINDING OF ABANDONMENT.—A finding of abandonment resulting in a termination of parental rights must be based upon clear and convincing evidence. A finding of abandonment may not be based upon a lack of emotional support to a birth mother during her pregnancy, but may be based upon emotional abuse to a birth mother during her pregnancy.

(a) In making a determination of abandonment at a hearing for termination of parental rights pursuant to this chapter, the court must consider, among other relevant factors not inconsistent with this section:

1. Whether the actions alleged to constitute abandonment demonstrate a willful disregard for the safety or welfare of the child or unborn child;

2. Whether other persons prevented the person alleged to have abandoned the child from making the efforts referenced in this subsection;

3. Whether the person alleged to have abandoned the child, while being able, refused to provide financial support after such person was informed he may be the father of the child;

4. Whether the person alleged to have abandoned the child, while being able, refused to pay for medical treatment when such payment was requested by the person having legal custody of the child and those expenses were not covered by insurance or other available sources;

5. Whether the amount of support provided or medical expenses paid was appropriate, taking into consideration the needs of the child and relative means and resources available to the person alleged to have abandoned the child and available to the person having legal custody of the child during the period the child allegedly was abandoned; and

6. Whether the person having legal custody of the child made the child's whereabouts known to the person alleged to have abandoned the child, advised that person of the needs of the child or the needs of the mother of an unborn child with regard to the pregnancy, or informed that person of events such as medical appointments and tests relating to the child or, if unborn, the pregnancy.

(b) The child has been abandoned when the parent of a child is incarcerated on or after October 1, 2001, in a state or federal correctional institution and:

1. The period of time for which the parent is expected to be incarcerated will constitute a substantial portion of the period of time before the child will attain the age of 18 years;

2. The incarcerated parent has been determined by the court to be a violent career criminal as defined in s. 775.084, a habitual violent felony offender as defined in s. 775.084, convicted of child abuse as defined in s. 827.03, or a sexual predator as defined in s. 775.21; has been convicted of first degree or second degree murder in violation of s. 782.04 or a sexual battery that constitutes a capital, life, or first degree felony violation of s. 794.011; or has been convicted of an offense in another jurisdiction which is substantially similar to one of the offenses listed in this subparagraph. As used in this section, the term "substantially similar offense" means any offense that is substantially similar in elements and penalties to one of those listed in this subparagraph, and that is in violation of a law of any other jurisdiction, whether that of another state, the District of Columbia, the United States or any possession or territory thereof, or any foreign jurisdiction; or

3. The court determines by clear and convincing evidence that continuing the parental relationship with the incarcerated parent would be harmful to the child and, for this reason, that termination of the parental rights of the incarcerated parent is in the best interest of the child.

(c) The only conduct of a father toward a mother during pregnancy that the court may consider in determining whether the child has been abandoned is conduct that occurred after the father was informed he may be the father of the child or after diligent search and notice as provided in s. 63.088 have been made to inform the father that he is, or may be, the father of the child.

(5) DISMISSAL OF PETITION WITH PREJUDICE.—If the court does not find by clear and convincing evidence that parental rights of a parent should be terminated pending adoption, the court must dismiss the petition with prejudice and that parent's parental rights that were the subject of such petition remain in full force under the law. The order must include written findings in support of the dismissal, including findings as to the criteria in subsection (4) if rejecting a claim of abandonment. Parental rights may not be terminated based upon a consent that the court finds has been timely withdrawn under s. 63.082 or a consent to adoption or affidavit of nonpaternity that the court finds was obtained by fraud or under duress. The court must enter an order based upon written findings providing for the placement of the minor. The court may order scientific testing to determine the paternity of the minor at any time during which the court has jurisdiction over the minor. Further proceedings, if any, regarding the minor must be brought in a separate custody action under chapter 61, a dependency action under chapter 39, or a paternity action under chapter 742.

(6) JUDGMENT TERMINATING PARENTAL RIGHTS PENDING ADOPTION.—

(a) The judgment terminating parental rights pending adoption must be in writing and contain findings of fact as to the grounds for terminating parental rights pending adoption.

(b) Within 24 hours after filing, the court shall mail a copy of the judgment to the department, the petitioner, those persons required to give consent under s. 63.062, and the respondent. The clerk shall execute a certificate of each mailing.

(7) RELIEF FROM JUDGMENT TERMINATING PARENTAL RIGHTS.—

(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 meeting the requirements under this chapter to exercise 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, shall be permitted between a parent and the child pending

resolution of the motion. Such contact shall be considered 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 of the minor if the person seeking to set aside the judgment is alleging to be the child's father and that fact has not previously been determined by legitimacy or scientific testing. The court may order supervised visitation with a person for whom scientific testing for paternity has been ordered. Such visitation shall be conditioned upon the filing of those test results with the court and such results establishing that person's paternity 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.

(8) RECORDS; CONFIDENTIAL INFORMATION.—All papers and records pertaining to a petition to terminate parental rights pending adoption are related to the subsequent adoption of the minor and are subject to the provisions of s. 63.162. The confidentiality provisions of this chapter do not apply to the extent information regarding persons or proceedings must be made available as specified under s. 63.088.

Section 19. Section 63.092, Florida Statutes, is amended to read:

63.092 Report to the court of intended placement by an adoption entity; at-risk placement intermediary; preliminary study.—

(1) REPORT TO THE COURT.—The adoption entity intermediary must report any intended placement of a minor for adoption with any person not related within the third degree or a stepparent if the adoption entity intermediary has knowledge of, or participates in, such intended placement. The report must be made to the court before the minor is placed in the home.

(2) AT-RISK PLACEMENT.—If the minor is placed in the prospective adoptive home before the parental rights of the minor's parents are terminated under s. 63.089, the placement is an at-risk placement. If the placement is an at-risk placement, the prospective adoptive parents must acknowledge in writing before the minor may be placed in the prospective adoptive home that the placement is at risk and that the minor is subject to removal from the prospective adoptive home by the adoption entity or by court order.

(3)(2) PRELIMINARY HOME STUDY.—Before placing the minor in the intended adoptive home, a preliminary home study must be performed by a licensed child-placing agency, a child-caring agency registered under s. 409.176, a licensed professional, or agency described in s. 61.20(2), unless the petitioner is a stepparent, a spouse of the birth parent, or a relative. The preliminary study shall be completed within 30 days after the receipt by the

court of the adoption entity's intermediary's report, but in no event may the minor child be placed in the prospective adoptive home prior to the completion of the preliminary study unless ordered by the court. If the petitioner is a stepparent, a spouse of the birth parent, or a relative, the preliminary home study may be required by the court for good cause shown. The department is required to perform the preliminary home study only if there is no licensed child-placing agency, child-caring agency registered under s. 409.176, licensed professional, or agency described in s. 61.20(2), in the county where the prospective adoptive parents reside. The preliminary home study must be made to determine the suitability of the intended adoptive parents and may be completed prior to identification of a prospective adoptive minor child. A favorable preliminary home study is valid for 1 year after the date of its completion. Upon its completion, a copy of the home study must be provided to the intended adoptive parents who were the subject of the home study. A minor may child must not be placed in an intended adoptive home before a favorable preliminary home study is completed unless the adoptive home is also a licensed foster home under s. 409.175. The preliminary home study must include, at a minimum:

- (a) An interview with the intended adoptive parents;
- (b) Records checks of the department's central abuse registry and criminal records correspondence checks pursuant to s. 435.045 through the Department of Law Enforcement on the intended adoptive parents;
- (c) An assessment of the physical environment of the home;
- (d) A determination of the financial security of the intended adoptive parents;
- (e) Documentation of counseling and education of the intended adoptive parents on adoptive parenting;
- (f) Documentation that information on adoption and the adoption process has been provided to the intended adoptive parents;
- (g) Documentation that information on support services available in the community has been provided to the intended adoptive parents; and
- (h) A copy of each the signed acknowledgment statement required by s. 63.085; and
- ~~(i) A copy of the written acknowledgment required by s. 63.085(1).~~

If the preliminary home study is favorable, a minor may be placed in the home pending entry of the judgment of adoption. A minor may not be placed in the home if the preliminary home study is unfavorable. If the preliminary home study is unfavorable, the adoption entity intermediary or petitioner may, within 20 days after receipt of a copy of the written recommendation, petition the court to determine the suitability of the intended adoptive home. A determination as to suitability under this subsection does not act as a presumption of suitability at the final hearing. In determining the suitability of the intended adoptive home, the court must consider the totality of the

circumstances in the home. No minor may be placed in a home in which there resides any person determined by the court to be a sexual predator as defined in s. 775.21 or to have been convicted of an offense listed in s. 63.089(4)(b)2.

Section 20. Section 63.097, Florida Statutes, is amended to read:

63.097 Fees.—

(1) When the adoption entity is an agency, fees may be assessed if they are approved by the department within the process of licensing the agency and if they are for:

- (a) Foster care expenses;
- (b) Preplacement and postplacement social services; and
- (c) Agency facility and administrative costs.

(2) The following fees, costs, and expenses may be assessed by the adoption entity or paid by the adoption entity on behalf of the prospective adoptive parents:

(a) Reasonable living expenses of the birth mother which the birth mother is unable to pay due to unemployment, underemployment, or disability due to the pregnancy which is certified by a medical professional who has examined the birth mother, or any other disability defined in s. 110.215. Reasonable living expenses are rent, utilities, basic telephone service, food, necessary clothing, transportation, and expenses found by the court to be necessary for the health of the unborn child.

(b) Reasonable and necessary medical expenses.

(c) Expenses necessary to comply with the requirements of this chapter, including, but not limited to, service of process under s. 63.088, a diligent search under s. 63.088, a preliminary home study under s. 63.092, and a final home investigation under s. 63.125.

(d) Court filing expenses, court costs, and other litigation expenses.

(e) Costs associated with advertising under s. 63.212(1)(g).

(f) The following professional fees:

1. A reasonable hourly fee necessary to provide legal representation to the adoptive parents or adoption entity in a proceeding filed under this chapter.

2. A reasonable hourly fee for contact with the parent related to the adoption. In determining a reasonable hourly fee under this subparagraph, the court must consider if the tasks done were clerical or of such a nature that the matter could have been handled by support staff at a lesser rate than the rate for legal representation charged under subparagraph 1. Such tasks specifically do not include obtaining a parent's signature on any docu-

ment; such tasks include, but need not be limited to, transportation, transmitting funds, arranging appointments, and securing accommodations.

3. A reasonable hourly fee for counseling services provided to a parent or a prospective adoptive parent by a psychologist licensed under chapter 490 or a clinical social worker, marriage and family therapist, or mental health counselor licensed under chapter 491, or a counselor who is employed by an adoption entity accredited by the Council on Accreditation of Services for Children and Families to provide pregnancy counseling and supportive services.

(3) Prior approval of the court is not required until the cumulative total of amounts permitted under subsection (2) exceeds:

(a) \$2,500 in legal or other fees;

(b) \$500 in court costs;

(c) \$3,000 in expenses; or

(d) \$1,500 cumulative expenses that are related to the minor, the pregnancy, a parent, or adoption proceeding, which expenses are incurred prior to the date the prospective adoptive parent retains the adoption entity.

(4) Any fees, costs, or expenses not included in subsection (2) or prohibited under subsection (5) require court approval prior to payment and must be based on a finding of extraordinary circumstances.

(5) The following fees, costs, and expenses are prohibited:

(a) Any fee or expense that constitutes payment for locating a minor for adoption.

(b) Any lump-sum payment to the entity which is nonrefundable directly to the payor or which is not itemized on the affidavit filed under s. 63.132.

(c) Any fee on the affidavit which does not specify the service that was provided and for which the fee is being charged, such as a fee for facilitation, acquisition, or other similar service, or which does not identify the date the service was provided, the time required to provide the service, the person or entity providing the service, and the hourly fee charged.

~~(1) APPROVAL OF FEES TO INTERMEDIARIES.—Any fee over \$1,000 and those costs as set out in s. 63.212(1)(d) over \$2,500, paid to an intermediary other than actual, documented medical costs, court costs, and hospital costs must be approved by the court prior to assessment of the fee by the intermediary and upon a showing of justification for the larger fee.~~

~~(6)(2) FEES FOR AGENCIES OR THE DEPARTMENT.—Unless otherwise indicated in this section, when an adoption entity intermediary uses the services of a licensed child-placing agency, a professional, any other person or agency pursuant to s. 63.092, or, if necessary, the department, the person seeking to adopt the child must pay the licensed child-placing agency, professional, other person or agency, or the department an amount equal to~~



the cost of all services performed, including, but not limited to, the cost of conducting the preliminary home study, counseling, and the final home investigation. The court, upon a finding that the person seeking to adopt the child is financially unable to pay that amount, may order that such person pay a lesser amount.

Section 21. Section 63.102, Florida Statutes, is amended to read:

63.102 Filing of petition for adoption or declaratory statement; venue; proceeding for approval of fees and costs.—

(1) A petition for adoption may not be filed until 30 days after the date of the entry of the judgment terminating parental rights pending adoption under this chapter, unless the adoptee is an adult or the minor has been the subject of a judgment terminating parental rights under chapter 39. After a judgment terminating parental rights has been entered, a proceeding for adoption may shall be commenced by filing a petition entitled, "In the Matter of the Adoption of ...." in the circuit court. The person to be adopted shall be designated in the caption in the name by which he or she is to be known if the petition is granted. If the child is placed for adoption by an agency, Any name by which the minor child was previously known may shall not be disclosed in the petition, the notice of hearing, or the judgment of adoption.

(2) A petition for adoption or for a declaratory statement as to the adoption contract shall be filed in the county where the petition for termination of parental rights was granted, unless the court, in accordance with s. 47.122, changes the venue to the county where the petitioner or petitioners or the minor child resides or where the adoption entity with agency in which the minor child has been placed is located. The circuit court in this state must retain jurisdiction over the matter until a final judgment is entered on the adoption. The Uniform Child Custody Jurisdiction Act does not apply until a final judgment is entered on the adoption.

(3) Except for adoptions involving placement of a minor child with a relative within the third degree of consanguinity, a petition for adoption in an adoption handled by an adoption entity intermediary shall be filed within 60 30 working days after entry of the judgment terminating parental rights placement of a child with a parent seeking to adopt the child. If no petition is filed within 60 30 days, any interested party, including the state, may file an action challenging the prospective adoptive parent's physical custody of the minor child.

(4) If the filing of the petition for adoption or for a declaratory statement as to the adoption contract in the county where the petitioner or minor child resides would tend to endanger the privacy of the petitioner or minor child, the petition for adoption may be filed in a different county, provided the substantive rights of any person will not thereby be affected.

(5) A proceeding for prior approval of fees and costs may be commenced any time after an agreement is reached between the birth mother and the adoptive parents by filing a petition for declaratory statement on the agreement entitled "In the Matter of the Proposed Adoption of a Minor Child" in the circuit court.

(a) The petition must be filed jointly by the adoption entity and each person who enters into the agreement.

(b) A contract for the payment of fees, costs, and expenses permitted under this chapter must be in writing, and any person who enters into the contract has 3 business days in which to cancel the contract. To cancel the contract, the person must notify the adoption entity in writing by certified United States mail, return receipt requested, no later than 3 business days after signing the contract. For the purposes of this subsection, the term "business day" means a day on which the United States Postal Service accepts certified mail for delivery. If the contract is canceled within the first 3 business days, the person who cancels the contract does not owe any legal, intermediary, or other fees, but may be responsible for the adoption entity's actual costs during that time.

(c) The court may grant prior approval only of fees and expenses permitted under s. 63.097. A prior approval of prospective fees and costs does not create a presumption that these items will subsequently be approved by the court under s. 63.132. The court, under s. 63.132, may order an adoption entity to refund any amount paid under this subsection that is subsequently found by the court to be greater than fees, costs, and expenses actually incurred.

(d) The contract may not require, and the court may not approve, any lump-sum payment to the entity which is nonrefundable to the payor or any amount that constitutes payment for locating a minor for adoption.

(e) When a petition for a declaratory statement as to the adoption contract is filed prior to the commencement of proceedings to terminate parental rights, it must be filed in accordance with the venue requirements for the filing of the petition terminating parental rights under s. 63.087. Pursuant to s. 63.087, a previously filed petition for a declaratory statement filed under this section must be consolidated with a related subsequently filed petition for termination of parental rights. If the petition for declaratory statement is filed after the judgment terminating parental rights has been entered, the action for declaratory statement must be consolidated with any related petition for adoption. Only one filing fee may be assessed for both the adoption and declaratory statement petitions.

(f) Prior approval of fees and costs by the court does not obligate the parent to ultimately relinquish the minor for adoption. If a petition for adoption is subsequently filed, the petition for declaratory statement and the petition for adoption must be consolidated into one case.

Section 22. Section 63.112, Florida Statutes, is amended to read:

63.112 Petition for adoption; description; report or recommendation, exceptions; mailing.—

(1) A sufficient number of copies of the petition for adoption shall be signed and verified by the petitioner and filed with the clerk of the court so that service may be made under subsection (4) and shall state:

- (a) The date and place of birth of the person to be adopted, if known;
  - (b) The name to be given to the person to be adopted;
  - (c) The date petitioner acquired custody of the minor and the name of the person placing the minor;
  - (d) The full name, age, and place and duration of residence of the petitioner;
  - (e) The marital status of the petitioner, including the date and place of marriage, if married, and divorces, if any;
  - (f) The facilities and resources of the petitioner, including those under a subsidy agreement, available to provide for the care of the minor to be adopted;
  - (g) A description and estimate of the value of any property of the person to be adopted;
  - (h) ~~The case style and date of entry of the judgment terminating parental rights name and address, if known, of any person whose consent to the adoption is required, but who has not consented, and facts or circumstances that excuse the lack of consent; and~~
  - (i) The reasons why the petitioner desires to adopt the person.
- (2) The following documents are required to be filed with the clerk of the court at the time the petition is filed:
- (a) A certified copy of the court judgment terminating parental rights under chapter 39 or under this chapter. ~~The required consents, unless consent is excused by the court.~~
  - (b) The favorable preliminary home study of the department, licensed child-placing agency, or professional pursuant to s. 63.092, as to the suitability of the home in which the minor has been placed.
  - (c) A copy of any declaratory statement previously entered by the court pursuant to s. 63.102.
  - (d)(e) ~~The surrender document must include documentation that an interview was~~ interviews were held with:
    - 1. ~~The birth mother, if parental rights have not been terminated;~~
    - 2. ~~The birth father, if his consent to the adoption is required and parental rights have not been terminated; and~~
    - 3. ~~the minor child, if older than 12 years of age, unless the court, in the best interest of the minor child, dispenses with the minor's child's consent under s. 63.062(1)(g) 63.062(1)(c).~~

~~The court may waive the requirement for an interview with the birth mother or birth father in the investigation for good cause shown.~~

(3) Unless ordered by the court, no report or recommendation is required when the placement is a stepparent adoption or when the minor child is related to one of the adoptive parents within the third degree.

(4) The clerk of the court shall mail a copy of the petition within 24 hours after filing, and execute a certificate of mailing, to the adoption entity department ~~and the agency~~ placing the minor, if any.

Section 23. Section 63.122, Florida Statutes, is amended to read:

63.122 Notice of hearing on petition.—

(1) After the petition to adopt a minor is filed, the court must establish a time and place for hearing the petition. The hearing ~~may~~ must not be held sooner than 30 days after the date the judgment terminating parental rights was entered or sooner than 90 days after the date the minor was placed ~~the placing of the minor~~ in the physical custody of the petitioner. The minor must remain under the supervision of the adoption entity department, an intermediary, or a licensed child-placing agency until the adoption becomes final. When the petitioner is a spouse of the birth parent, the hearing may be held immediately after the filing of the petition.

(2) Notice of hearing must be given as prescribed by the rules of civil procedure, and service of process must be made as specified by law for civil actions.

(3) Upon a showing by the petitioner that the privacy of the petitioner or minor child may be endangered, the court may order the names of the petitioner or minor child, or both, to be deleted from the notice of hearing and from the copy of the petition attached thereto, provided the substantive rights of any person will not thereby be affected.

(4) Notice of the hearing must be given by the petitioner to the adoption entity that places the minor.

~~(a) The department or any licensed child-placing agency placing the minor.~~

~~(b) The intermediary.~~

~~(c) Any person whose consent to the adoption is required by this act who has not consented, unless such person's consent is excused by the court.~~

~~(d) Any person who is seeking to withdraw consent.~~

(5) After filing the petition to adopt an adult, a notice of the time and place of the hearing must be given to any person whose consent to the adoption is required but who has not consented. The court may order an appropriate investigation to assist in determining whether the adoption is in the best interest of the persons involved.

Section 24. Section 63.125, Florida Statutes, is amended to read:

63.125 Final home investigation.—

(1) The final home investigation must be conducted before the adoption becomes final. The investigation may be conducted by a licensed child-placing agency or a professional in the same manner as provided in s. 63.092 to ascertain whether the adoptive home is a suitable home for the minor and whether the proposed adoption is in the best interest of the minor. Unless directed by the court, an investigation and recommendation are not required if the petitioner is a stepparent or if the ~~minor child~~ is related to one of the adoptive parents within the third degree of consanguinity. The department is required to perform the home investigation only if there is no licensed child-placing agency or professional pursuant to s. 63.092 in the county in which the prospective adoptive parent resides.

(2) The department, the licensed child-placing agency, or the professional that performs the investigation must file a written report of the investigation with the court and the petitioner within 90 days after the date the petition is filed.

(3) The report of the investigation must contain an evaluation of the placement with a recommendation on the granting of the petition for adoption and any other information the court requires regarding the petitioner or the minor.

(4) The department, the licensed child-placing agency, or the professional making the required investigation may request other state agencies or child-placing agencies within or outside this state to make investigations of designated parts of the inquiry and to make a written report to the department, the professional, or other person or agency.

(5) The final home investigation must include:

(a) The information from the preliminary home study.

(b) After the ~~minor child~~ is placed in the intended adoptive home, two scheduled visits with the ~~minor child~~ and the ~~minor's child's~~ adoptive parent or parents, one of which visits must be in the home, to determine the suitability of the placement.

(c) The family social and medical history as provided in s. 63.082.

(d) Any other information relevant to the suitability of the intended adoptive home.

(e) Any other relevant information, as provided in rules that the department may adopt.

Section 25. Section 63.132, Florida Statutes, is amended to read:

63.132 Affidavit Report of expenses expenditures and receipts.—

(1) At least 10 days before the hearing on the petition for adoption, the prospective adoptive parent petitioner and any adoption entity intermediary must file two copies of an affidavit under this section.

(a) The affidavit must be signed by the adoption entity and the prospective adoptive parents. A copy of the affidavit must be provided to the adoptive parents at the time the affidavit is executed.

(b) The affidavit must itemize ~~containing a full accounting of~~ all disbursements and receipts of anything of value, including professional and legal fees, made or agreed to be made by or on behalf of the prospective adoptive parent petitioner and any adoption entity intermediary in connection with the adoption or in connection with any prior proceeding to terminate parental rights which involved the minor who is the subject of the petition for adoption. The affidavit must also include, for each fee itemized, the service provided for which the fee is being charged, the date the service was provided, the time required to provide the service, the person or entity that provided the service, and the hourly fee charged.

(c) The clerk of the court shall forward a copy of the affidavit to the department.

(d) The affidavit ~~report~~ must show any expenses or receipts incurred in connection with:

1.(a) The birth of the minor.

2.(b) The placement of the minor with the petitioner.

3.(c) The medical or hospital care received by the mother or by the minor during the mother's prenatal care and confinement.

4.(d) The living expenses of the birth mother. The living expenses must be documented in detail to apprise the court of the exact expenses incurred.

5.(e) The services relating to the adoption or to the placement of the minor for adoption that were received by or on behalf of the petitioner, the adoption entity intermediary, either ~~natural~~ parent, the minor, or any other person.

The affidavit must state whether any of these expenses were paid by collateral sources, including, but not limited to, health insurance, Medicaid, Medicare, or public assistance.

(2) The court may require such additional information as is deemed necessary.

(3) The court must issue a separate order approving or disapproving the fees, costs, and expenses itemized in the affidavit. The court may approve only fees, costs, and expenditures allowed under s. 63.097. The court may reject in whole or in part any fee, cost, or expenditure listed if the court finds that the expense is:

(a) Contrary to this chapter;

(b) Not supported by a receipt in the record, if the expense is not a fee of the adoption entity; or

(c) Not a reasonable fee or expense, considering the requirements of this chapter and the totality of the circumstances.

(4)(3) This section does not apply to an adoption by a stepparent whose spouse is a ~~natural or adoptive~~ parent of the child.

Section 26. Section 63.142, Florida Statutes, is amended to read:

63.142 Hearing; judgment of adoption.—

(1) APPEARANCE.—The petitioner and the person to be adopted shall appear at the hearing on the petition for adoption, unless:

- (a) The person is a minor under 12 years of age;<sup>3</sup> or
- (b) The presence of either is excused by the court for good cause.

(2) CONTINUANCE.—The court may continue the hearing from time to time to permit further observation, investigation, or consideration of any facts or circumstances affecting the granting of the petition.

(3) DISMISSAL.—

(a) If the petition is dismissed, the court shall determine the person that is to have custody of the minor.

(b) If the petition is dismissed, the court shall state with specificity the reasons for the dismissal.

(4) JUDGMENT.—At the conclusion of the hearing, after when the court determines that the date for a parent to file an appeal of a valid judgment terminating that parent's parental rights has passed and no appeal, pursuant to the Florida Rules of Appellate Procedure, is pending all necessary consents have been obtained and that the adoption is in the best interest of the person to be adopted, a judgment of adoption shall be entered.

(a) A judgment terminating parental rights pending adoption is voidable and any later judgment of adoption of that minor is voidable if, upon a motion to set aside of a parent, the court finds that any 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 meeting the requirements under this chapter to exercise his or her parental rights. A motion under this paragraph must be filed with the court that entered the original judgment. The motion must be filed within a reasonable time, but not later than 2 years after the date the judgment terminating parental rights was entered.

(b) Except upon good cause shown, 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, shall be permitted between a parent and the child pending resolution of the motion. Such contact shall be considered 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 its own motion, may order scientific testing to determine the paternity of the minor if the person seeking to set aside the judgment is alleging to be the child's father and that fact has not previously been determined by legitimacy or scientific testing. The court may order supervised visitation with a person for whom scientific testing for paternity has been ordered. Such visitation shall be conditioned upon the filing of those test results with the court and such results establishing that person's paternity of the minor.

(d) Except upon good cause shown, 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 issue its written order as expeditiously as possible thereafter.

Section 27. Subsection (2) of section 63.162, Florida Statutes, is amended to read:

63.162 Hearings and records in adoption proceedings; confidential nature.—

(2) All papers and records pertaining to the adoption, including the original birth certificate, whether part of the permanent record of the court or a file in the office of an adoption entity department, in a licensed child-placing agency, or in the office of an intermediary are confidential and subject to inspection only upon order of the court; however, the petitioner in any proceeding for adoption under this chapter may, at the option of the petitioner, make public the reasons for a denial of the petition for adoption. The order must specify which portion of the records are subject to inspection, and it may exclude the name and identifying information concerning the birth parent or adoptee. Papers and records of the department, a court, or any other governmental agency, which papers and records relate to adoptions, are exempt from s. 119.07(1). In the case of a nonagency adoption, the department must be given notice of hearing and be permitted to present to the court a report on the advisability of disclosing or not disclosing information pertaining to the adoption. In the case of an agency adoption, the licensed child-placing agency must be given notice of hearing and be permitted to present to the court a report on the advisability of disclosing or not disclosing information pertaining to the adoption. This subsection does not prohibit the department from inspecting and copying any official record pertaining to the adoption that is maintained by the department and does not prohibit an agency from inspecting and copying any official record pertaining to the adoption that is maintained by that agency.

Section 28. Section 63.165, Florida Statutes, is amended to read:

63.165 State registry of adoption information; duty to inform and explain.—Notwithstanding any other law to the contrary, the department shall maintain a registry with the last known names and addresses of an adoptee and his or her natural parents whose consent was required under s. 63.062, and adoptive parents and any other identifying information that



which the adoptee, natural parents whose consent was required under s. 63.062, or adoptive parents desire to include in the registry. The department shall maintain the registry records for the time required by rules adopted by the department in accordance with this chapter or for 99 years, whichever period is greater. The registry shall be open with respect to all adoptions in the state, regardless of when they took place. The registry shall be available for those persons choosing to enter information therein, but no one shall be required to do so.

(1) Anyone seeking to enter, change, or use information in the registry, or any agent of such person, shall present verification of his or her identity and, if applicable, his or her authority. A person who enters information in the registry shall be required to indicate clearly the persons to whom he or she is consenting to release this information, which persons shall be limited to the adoptee and the birth natural mother, natural father whose consent was required under s. 63.062, adoptive mother, adoptive father, birth natural siblings, and maternal and paternal birth natural grandparents of the adoptee. Except as provided in this section, information in the registry is confidential and exempt from the provisions of s. 119.07(1). Consent to the release of this information may be made in the case of a minor adoptee by his or her adoptive parents or by the court after a showing of good cause. At any time, any person may withdraw, limit, or otherwise restrict consent to release information by notifying the department in writing.

(2) The department may charge a reasonable fee to any person seeking to enter, change, or use information in the registry. The department shall deposit such fees in a trust fund to be used by the department only for the efficient administration of this section. The department and agencies shall make counseling available for a fee to all persons seeking to use the registry, and the department shall inform all affected persons of the availability of such counseling.

(3) ~~The adoption entity department, intermediary, or licensed child-placing agency~~ must inform the birth parents before parental rights are terminated, and the adoptive parents before placement, in writing, of the existence and purpose of the registry established under this section, but failure to do so does not affect the validity of any proceeding under this chapter.

Section 29. Subsection (2) of section 63.202, Florida Statutes, is amended to read:

63.202 Authority to license; adoption of rules.—

(2) No agency shall place a minor for adoption unless such agency is licensed by the department, except a child-caring agency registered under s. 409.176.

Section 30. Section 63.207, Florida Statutes, is amended to read:

63.207 Out-of-state placement.—

(1) Unless the parent placing a minor for adoption files an affidavit that the parent chooses to place the minor outside the state, giving the reason

for that placement, or the minor child is to be placed with a relative within the third degree or with a stepparent, or the minor is a special needs child, as defined in s. 409.166, or for other good cause shown, an adoption entity may not ~~no person except an intermediary, an agency, or the department shall:~~

(a) Take or send a minor child out of the state for the purpose of placement for adoption; or

(b) Place or attempt to place a minor child for the purpose of adoption with a family who primarily lives and works outside Florida in another state. ~~An intermediary may place or attempt to place a child for adoption in another state only if the child is a special needs child as that term is defined in s. 409.166. If an adoption entity intermediary is acting under this subsection, the adoption entity must intermediary shall~~ file a petition for declaratory statement pursuant to s. 63.102 for prior approval of fees and costs. The court shall review the costs pursuant to s. 63.097. The petition for declaratory statement must be converted to a petition for an adoption upon placement of the minor child in the home. The circuit court in this state must retain jurisdiction over the matter until the adoption becomes final. The prospective adoptive parents must come to this state to have the adoption finalized. Violation of the order subjects the adoption entity intermediary to contempt of court and to the penalties provided in s. 63.212.

(2) An adoption entity intermediary may not counsel a birth mother to leave the state for the purpose of giving birth to a child outside the state in order to secure a fee in excess of that permitted under s. 63.097 when it is the intention that the child is to be placed for adoption outside the state.

(3) When applicable, the Interstate Compact on the Placement of Children authorized in s. 409.401 shall be used in placing children outside the state for adoption.

Section 31. Section 63.212, Florida Statutes, is amended to read:

63.212 Prohibited acts; penalties for violation; preplanned adoption agreement.—

(1) It is unlawful for any person:

(a) ~~Except the department, an intermediary, or an agency,~~ To place or attempt to place a minor child for adoption with a person who primarily lives and works outside this state unless the minor child is placed with a relative within the third degree or with a stepparent. ~~An intermediary may place or attempt to place a special needs child for adoption with a person who primarily lives and works outside this state only if the intermediary has a declaratory statement from the court establishing the fees to be paid. This requirement does not apply if the minor child is placed by an adoption entity in accordance with s. 63.207 with a relative within the third degree or with a stepparent.~~

(b) ~~Except the department, an intermediary, or an agency, to place or attempt to place a child for adoption with a family whose primary residence~~

~~and place of employment is in another state unless the child is placed with a relative within the third degree or with a stepparent. An intermediary may place or attempt to place a special needs child for adoption with a family whose primary residence and place of employment is in another state only if the intermediary has a declaratory statement from the court establishing the fees to be paid. This requirement does not apply if the child is placed with a relative within the third degree or with a stepparent.~~

~~(b)(c) Except an adoption entity the Department of Children and Family Services, an agency, or an intermediary, to place or attempt to place within the state a minor child for adoption unless the minor child is placed with a relative within the third degree or with a stepparent. This prohibition, however, does not apply to a person who is placing or attempting to place a minor child for the purpose of adoption with the adoption entity Department of Children and Family Services or an agency or through an intermediary.~~

~~(c)(d) To sell or surrender, or to arrange for the sale or surrender of, a minor child to another person for money or anything of value or to receive such minor child for such payment or thing of value. If a minor child is being adopted by a relative within the third degree or by a stepparent, or is being adopted through an adoption entity, this paragraph does not prohibit the Department of Children and Family Services, an agency, or an intermediary, nothing herein shall be construed as prohibiting the person who is contemplating adopting the child from paying, under ss. 63.097 and 63.132, the actual prenatal care and living expenses of the mother of the child to be adopted, or ~~not~~ from paying, under ss. 63.097 and 63.132, the actual living and medical expenses of such mother for a reasonable time, not to exceed 6 weeks, if medical needs require such support, after the birth of the minor child.~~

~~(d)(e) Having the rights and duties of a parent with respect to the care and custody of a minor to assign or transfer such parental rights for the purpose of, incidental to, or otherwise connected with, selling or offering to sell such rights and duties.~~

~~(e)(f) To assist in the commission of any act prohibited in paragraphs (a)-(d) paragraph (a), paragraph (b), paragraph (c), paragraph (d), or paragraph (e).~~

~~(f)(g) Except an adoption entity the Department of Children and Family Services or an agency, to charge or accept any fee or compensation of any nature from anyone for making a referral in connection with an adoption.~~

~~(g)(h) Except an adoption entity the Department of Children and Family Services, an agency, or an intermediary, to advertise or offer to the public, in any way, by any medium whatever that a minor child is available for adoption or that a minor child is sought for adoption; and, further, it is unlawful for any person to publish or broadcast any such advertisement without including a Florida license number of the agency or, attorney, ~~or~~ physician placing the advertisement.~~

(h)(i) To contract for the purchase, sale, or transfer of custody or parental rights in connection with any child, ~~or~~ in connection with any fetus yet unborn, or in connection with any fetus identified in any way but not yet conceived, in return for any valuable consideration. Any such contract is void and unenforceable as against the public policy of this state. However, fees, costs, and other incidental payments made in accordance with statutory provisions for adoption, foster care, and child welfare are permitted, and a person may agree to pay expenses in connection with a preplanned adoption agreement as specified below, but the payment of such expenses may not be conditioned upon the transfer of parental rights. Each petition for adoption which is filed in connection with a preplanned adoption agreement must clearly identify the adoption as a preplanned adoption arrangement and must include a copy of the preplanned adoption agreement for review by the court.

1. Individuals may enter into a preplanned adoption arrangement as specified herein, but such arrangement shall not in any way:

a. Effect final transfer of custody of a child or final adoption of a child, without review and approval of the department and the court, and without compliance with other applicable provisions of law.

b. Constitute consent of a mother to place her child for adoption until 7 days following birth, and unless the court making the custody determination or approving the adoption determines that the mother was aware of her right to rescind within the 7-day period following birth but chose not to rescind such consent.

2. A preplanned adoption arrangement shall be based upon a preplanned adoption agreement that must ~~which shall~~ include, but need not be limited to, the following terms:

a. That the volunteer mother agrees to become pregnant by the fertility technique specified in the agreement, to bear the child, and to terminate any parental rights and responsibilities to the child she might have through a written consent executed at the same time as the preplanned adoption agreement, subject to a right of rescission by the volunteer mother any time within 7 days after the birth of the child.

b. That the volunteer mother agrees to submit to reasonable medical evaluation and treatment and to adhere to reasonable medical instructions about her prenatal health.

c. That the volunteer mother acknowledges that she is aware that she will assume parental rights and responsibilities for the child born to her as otherwise provided by law for a mother, if the intended father and intended mother terminate the agreement before final transfer of custody is completed, or if a court determines that a parent clearly specified by the preplanned adoption agreement to be the biological parent is not the biological parent, or if the preplanned adoption is not approved by the court pursuant to the Florida Adoption Act.

d. That an intended father who is also the biological father acknowledges that he is aware that he will assume parental rights and responsibilities for the child as otherwise provided by law for a father, if the agreement is terminated for any reason by any party before final transfer of custody is completed or if the planned adoption is not approved by the court pursuant to the Florida Adoption Act.

e. That the intended father and intended mother acknowledge that they may not receive custody or the parental rights under the agreement if the volunteer mother terminates the agreement or if the volunteer mother rescinds her consent to place her child for adoption within 7 days after birth.

f. That the intended father and intended mother may agree to pay all reasonable legal, medical, psychological, or psychiatric expenses of the volunteer mother related to the preplanned adoption arrangement, and may agree to pay the reasonable living expenses of the volunteer mother. No other compensation, whether in cash or in kind, shall be made pursuant to a preplanned adoption arrangement.

g. That the intended father and intended mother agree to accept custody of and to assert full parental rights and responsibilities for the child immediately upon the child's birth, regardless of any impairment to the child.

h. That the intended father and intended mother shall have the right to specify the blood and tissue typing tests to be performed if the agreement specifies that at least one of them is intended to be the biological parent of the child.

i. That the agreement may be terminated at any time by any of the parties.

3. A preplanned adoption agreement shall not contain any provision:

a. To reduce any amount paid to the volunteer mother if the child is stillborn or is born alive but impaired, or to provide for the payment of a supplement or bonus for any reason.

b. Requiring the termination of the volunteer mother's pregnancy.

4. An attorney who represents an intended father and intended mother or any other attorney with whom that attorney is associated shall not represent simultaneously a female who is or proposes to be a volunteer mother in any matter relating to a preplanned adoption agreement or preplanned adoption arrangement.

5. Payment to agents, finders, and intermediaries, including attorneys and physicians, as a finder's fee for finding volunteer mothers or matching a volunteer mother and intended father and intended mother is prohibited. Doctors, psychologists, attorneys, and other professionals may receive reasonable compensation for their professional services, such as providing medical services and procedures, legal advice in structuring and negotiating a preplanned adoption agreement, or counseling.

6. As used in this paragraph, the term:

a. "Blood and tissue typing tests" include, but are not limited to, tests of red cell antigens, red cell isoenzymes, human leukocyte antigens, and serum proteins.

b. "Child" means the child or children conceived by means of an insemination that is part of a preplanned adoption arrangement.

c. "Fertility technique" means artificial embryonation, artificial insemination, whether in vivo or in vitro, egg donation, or embryo adoption.

d. "Intended father" means a male who, as evidenced by a preplanned adoption agreement, intends to have the parental rights and responsibilities for a child conceived through a fertility technique, regardless of whether the child is biologically related to the male.

e. "Intended mother" means a female who, as evidenced by a preplanned adoption agreement, intends to have the parental rights and responsibilities for a child conceived through a fertility technique, regardless of whether the child is biologically related to the female.

f. "Parties" means the intended father and intended mother, the volunteer mother and her husband, if she has a husband, who are all parties to the preplanned adoption agreement.

g. "Preplanned adoption agreement" means a written agreement among the parties that specifies the intent of the parties as to their rights and responsibilities in the preplanned adoption arrangement, consistent with the provisions of this act.

h. "Preplanned adoption arrangement" means the arrangement through which the parties enter into an agreement for the volunteer mother to bear the child, for payment by the intended father and intended mother of the expenses allowed by this act, for the intended father and intended mother to assert full parental rights and responsibilities to the child if consent to adoption is not rescinded after birth by the volunteer mother, and for the volunteer mother to terminate, subject to a right of rescission, in favor of the intended father and intended mother all her parental rights and responsibilities to the child.

i. "Volunteer mother" means a female person at least 18 years of age who voluntarily agrees, subject to a right of rescission, that if she should become pregnant pursuant to a preplanned adoption arrangement, she will terminate in favor of the intended father and intended mother her parental rights and responsibilities to the child.

(2)(a) It is unlawful for any person under this chapter to:

1. Knowingly provide false information; or

2. Knowingly withhold material information.

(b) It is unlawful for a parent, with the intent to defraud, to accept benefits related to the same pregnancy from more than one adoption entity without disclosing that fact to each entity.

(c) It is unlawful for any person who knows that the parent whose rights are to be terminated intends to object to said termination to intentionally file the petition for termination of parental rights in a county inconsistent with the required venue under such circumstances.

Any person who willfully violates any provision of this subsection commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. In addition, such person is liable for damages caused by such acts or omissions, including reasonable attorney's fees and costs. Damages may be awarded through restitution in any related criminal prosecution or by filing a separate civil action.

(3)(2) This section does not ~~Nothing herein shall be construed to prohibit an adoption entity a licensed child-placing agency from charging fees permitted under this chapter and~~ reasonably commensurate to the services provided.

(4)(3) It is unlawful for any adoption entity intermediary to fail to report to the court, prior to placement, the intended placement of a minor child for purposes of adoption with any person not a stepparent or a relative within the third degree, if the adoption entity intermediary participates in such intended placement.

(5)(4) It is unlawful for any adoption entity intermediary to charge any fee except those fees permitted under s. 63.097 and approved under s. 63.102 over \$1,000 and those costs as set out in paragraph (1)(d) over \$2,500, other than for actual documented medical costs, court costs, and hospital costs unless such fee is approved by the court prior to the assessment of the fee by the intermediary and upon a showing of justification for the larger fee.

(6)(5) It is unlawful for any adoption entity intermediary to counsel a birth mother to leave the state for the purpose of giving birth to a child outside the state in order to secure a fee in excess of that permitted under s. 63.097 when it is the intention that the child be placed for adoption outside the state.

(7)(6) It is unlawful for any adoption entity intermediary to obtain a preliminary home study or final home investigation and fail to disclose the existence of the study or investigation to the court.

(8)(7) Unless otherwise indicated, a person who violates any provision of this section, excluding paragraph (1)(g)(h), commits is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. A person who violates paragraph (1)(g)(h) commits is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083; and each day of continuing violation shall be considered a separate offense.

Section 32. Section 63.219, Florida Statutes, is amended to read:

63.219 Sanctions.—Upon a finding by the court that an adoption entity intermediary or agency has violated any provision of this chapter, the court is authorized to prohibit the adoption entity intermediary or agency from placing a minor for adoption in the future.

Section 33. Section 63.2325, Florida Statutes, is created to read:

63.2325 Conditions for revocation of a consent to adoption or affidavit of nonpaternity.—Notwithstanding the requirements of this chapter, a failure to meet any of those requirements does not constitute grounds for revocation of a consent to adoption or withdrawal of an affidavit of nonpaternity unless the extent and circumstances of such a failure result in a material failure of fundamental fairness in the administration of due process, or the failure constitutes or contributes to fraud or duress in obtaining a consent to adoption or affidavit of nonpaternity.

Section 34. Subsection (39) of section 984.03, Florida Statutes, is amended to read:

984.03 Definitions.—When used in this chapter, the term:

(39) “Parent” means a woman who gives birth to a child and a man whose consent to the adoption of the child would be required under s. 63.062(1)(b). If a child has been legally adopted, the term “parent” means the adoptive mother or father of the child. The term does not include an individual whose parental relationship to the child has been legally terminated, or an alleged or prospective parent, unless the parental status falls within the terms of either s. 39.503(1) or s. 63.062(1)(b).

Section 35. Subsection (40) of section 985.03, Florida Statutes, is amended to read:

985.03 Definitions.—When used in this chapter, the term:

(40) “Parent” means a woman who gives birth to a child and a man whose consent to the adoption of the child would be required under s. 63.062(1)(b). If a child has been legally adopted, the term “parent” means the adoptive mother or father of the child. The term does not include an individual whose parental relationship to the child has been legally terminated, or an alleged or prospective parent, unless the parental status falls within the terms of either s. 39.503(1) or s. 63.062(1)(b).

Section 36. Section 63.072, Florida Statutes, is repealed.

Section 37. Any petition for adoption filed before October 1, 2001, shall be governed by the law in effect at the time the petition was filed.

Section 38. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.



Section 39. Section 395.1024, F.S., is created to read:

395.1024 Patients Consenting to Adoptions; Protocols

(1) Each licensed facility shall adopt a protocol that at a minimum provides for facility staff to be knowledgeable of the waiting periods, revocation and the contents of the consent to adoption as contained in s. 63.082(4), and describes the supportive and unbiased manner in which facility staff will interact with birth parents and prospective adoptive parents regarding the adoption, in particular during the waiting period required in s. 63.082(4)(b) before consenting to an adoption.

(2) The protocol shall be in writing and be provided upon request to any birth parent or prospective adoptive parent of a child born in the facility.

Section 40. Section 383.310, F.S., is created to read:

383.310, F.S., Patients Consenting to Adoptions; Protocols

(1) Each licensed facility shall adopt a protocol that at a minimum provides for facility staff to be knowledgeable of the waiting periods, revocation and the contents of the consent to adoption as contained in s. 63.082(4), and describes the supportive and unbiased manner in which facility staff will interact with birth parents and prospective adoptive parents regarding the adoption, in particular during the waiting period required in s. 63.082(4)(b) before consenting to an adoption.

(2) The protocol shall be in writing and be provided upon request to any birth parent or prospective adoptive parent of a child born in the facility.

Section 41. This act shall take effect October 1, 2001.

Became a law without the Governor's approval April 18, 2001.

Filed in Office Secretary of State April 17, 2001.