

## CHAPTER 2016-71

### Committee Substitute for Committee Substitute for Committee Substitute for Senate Bill No. 590

An act relating to adoption; amending s. 39.01, F.S.; redefining the terms “abandoned” or “abandonment” and “parent”; amending s. 63.082, F.S.; revising the circumstances under which an adoption consent is valid, binding, and enforceable; requiring a court to determine, under certain circumstances, whether a change of placement of a child is in the child’s best interests, rather than whether the change of placement is appropriate; deleting a determination that a court must consider under certain circumstances; authorizing the court to establish certain requirements for the transfer of custody; providing factors that the court shall consider and weigh under certain circumstances; revising circumstances under which a court must provide written notice to a parent of specified information; providing an effective date.

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

Section 1. Subsections (1) and (49) of section 39.01, Florida Statutes, are amended to read:

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

(1) “Abandoned” or “abandonment” means a situation in which the parent or legal custodian of a child or, in the absence of a parent or legal custodian, the caregiver, while being able, has made no significant contribution to the child’s care and maintenance or has failed to establish or maintain a substantial and positive relationship with the child, or both. For purposes of this subsection, “establish or maintain a substantial and positive relationship” includes, but is not limited to, frequent and regular contact with the child through frequent and regular visitation or frequent and regular communication to or with the child, and the exercise of parental rights and responsibilities. Marginal efforts and incidental or token visits or communications are not sufficient to establish or maintain a substantial and positive relationship with a child. A man’s acknowledgement of paternity of the child does not limit the period of time considered in determining whether the child was abandoned. The term does not include a surrendered newborn infant as described in s. 383.50, a “child in need of services” as defined in chapter 984, or a “family in need of services” as defined in chapter 984. The incarceration, repeated incarceration, or extended incarceration of a parent, legal custodian, or caregiver responsible for a child’s welfare may support a finding of abandonment.

(49) “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). 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 s. 39.503(1) or s. 63.062(1).~~ For purposes of this chapter only, when the phrase “parent or legal custodian” is used, it refers to rights or responsibilities of the parent and, only if there is no living parent with intact parental rights, to the rights or responsibilities of the legal custodian who has assumed the role of the parent. The term does not include an individual whose parental relationship to the child has been legally terminated, or an alleged or prospective parent, unless:

(a) The parental status falls within the terms of s. 39.503(1) or s. 63.062(1); or

(b) Parental status is applied for the purpose of determining whether the child has been abandoned.

Section 2. Subsection (6) of 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; revocation of consent.—

(6)(a) If a parent executes a consent for adoption placement of a minor with an adoption entity or qualified prospective adoptive parents and the minor child is under the supervision in the custody of the department, or otherwise subject to the jurisdiction of the dependency court as a result of the entry of a shelter order, a dependency petition, or a petition for termination of parental rights pursuant to chapter 39, but parental rights have not yet been terminated, the adoption consent is valid, binding, and enforceable by the court.

(b) Upon execution of the consent of the parent, the adoption entity shall be permitted to intervene in the dependency case as a party in interest and must provide the court that acquired jurisdiction over the minor, pursuant to the shelter order or dependency petition filed by the department, a copy of the preliminary home study of the prospective adoptive parents and any other evidence of the suitability of the placement. The preliminary home study must be maintained with strictest confidentiality within the dependency court file and the department’s file. A preliminary home study must be provided to the court in all cases in which an adoption entity has intervened pursuant to this section. Unless the court has concerns regarding the qualifications of the home study provider, or concerns that the home study may not be adequate to determine the best interests of the child, the home study provided by the adoption entity shall be deemed to be sufficient and no additional home study needs to be performed by the department.

(c) If an adoption entity files a motion to intervene in the dependency case in accordance with this chapter, the dependency court shall promptly grant a hearing to determine whether the adoption entity has filed the

required documents to be permitted to intervene and whether a change of placement of the child is in the best interests of the child appropriate. Absent good cause or mutual agreement of the parties, the final hearing on the motion to intervene and the change of placement of the child must be held within 30 days after the filing of the motion and a written final order shall be filed within 15 days after the hearing.

(d) If after consideration of all relevant factors, including those set forth in paragraph (e), the court determines ~~Upon a determination by the court~~ that the prospective adoptive parents are properly qualified to adopt the minor child and that the adoption ~~is~~ appears to be in the best interests of the minor child, the court shall ~~promptly~~ immediately order the transfer of custody of the minor child to the prospective adoptive parents, under the supervision of the adoption entity. The court may establish reasonable requirements for the transfer of custody in the transfer order, including a reasonable period of time to transition final custody to the prospective adoptive parents. The adoption entity shall thereafter provide monthly supervision reports to the department until finalization of the adoption. If the child has been determined to be dependent by the court, the department shall provide information to the prospective adoptive parents at the time they receive placement of the dependent child regarding approved parent training classes available within the community. The department shall file with the court an acknowledgment of the parent's receipt of the information regarding approved parent training classes available within the community.

(e) In determining whether the best interests of the child are served by transferring the custody of the minor child to the prospective adoptive parent selected by the parent or adoption entity, the court shall consider and weigh all relevant factors, including, but not limited to: the rights of the parent to determine an appropriate placement for the child,

1. The permanency offered;
2. The established bonded relationship between the child and the current caregiver in child's bonding with any potential adoptive home in which that the child has been residing; in,
3. The stability of the potential adoptive home in which the child has been residing as well as the desirability of maintaining continuity of placement; and
4. The importance of maintaining sibling relationships, if possible;
5. The reasonable preferences and wishes of the child, if the court deems the child to be of sufficient maturity, understanding, and experience to express a preference;
6. Whether a petition for termination of parental rights has been filed pursuant to s. 39.806(1)(f), (g), or (h);
7. What is best for the child; and

8. The right of the parent to determine an appropriate placement for the child.

(f) The adoption entity shall be responsible for keeping the dependency court informed of the status of the adoption proceedings at least every 90 days from the date of the order changing placement of the child until the date of finalization of the adoption.

(g) At the arraignment hearing held pursuant to s. 39.506, in the order that approves the case plan pursuant to s. 39.603, and in the order that changes the permanency goal to adoption pursuant to s. 39.621 ~~In all dependency proceedings, after it is determined that reunification is not a viable alternative and prior to the filing of a petition for termination of parental rights,~~ the court shall provide written notice to advise the biological parent who is a party to the case of his or her ~~the~~ right to participate in a private adoption plan including written notice of the factors provided in paragraph (e).

Section 3. This act shall take effect July 1, 2016.

Approved by the Governor March 23, 2016.

Filed in Office Secretary of State March 23, 2016.