Using a “Brief Case Plan” Method To Reconcile Kinship Rights and the Best Interests of the Child When an Unwed Father Contests a Mother’s Decision to Place an Infant for Adoption

Cheryl Ryon Eisen*
Using a "Brief Case Plan" Method to Reconcile Kinship Rights and the Best Interests of the Child When an Unwed Father Contests a Mother’s Decision to Place an Infant For Adoption

The Florida Senate Committee on the Judiciary proposed Senate Bill 550 regarding adoption for consideration in the 1998 legislative session. The bill failed in committee in the House of Representatives, but has been pre-filed as Senate Bill 0002 for 1999. This article examines one of the areas of concern addressed by the bill and proposes an alternative approach to the issue.

Cheryl Ryon Eisen

TABLE OF CONTENTS

I. INTRODUCTION ................................................................. 340
   A. "Victimization" of the Child ........................................... 342
   B. Kinship Rights and the Best Interests of the Child ........... 343
   C. Call for Reform ......................................................... 344
   D. Evaluation of Performance ........................................... 345

II. CHAPTERS 39 AND 63: AN ABBREVIATED OVERVIEW
    OF CURRENT FLORIDA STATUTES RELATING TO ADOPTION .... 346
    A. Florida Statutes Chapter 39 ("Proceedings Relating
       to Children") ...................................................... 346
    B. Florida Statutes Chapter 63 ("Adoption") ....................... 348
    C. A Need for Change ................................................... 350

* Cheryl Ryon Eisen was admitted to the Florida Bar in 1974, and is Secretary of its Family Law Section’s Adoption, Juvenile Law and Special Needs of Children Committee. She is an adoptee and the adoptive mother of two teenaged sons. She attended the University of Florida for both undergraduate and law school (B.A. 1970, J.D. 1974), and was on the faculties of Nova University Law School, 1975–1983, and St. Thomas University Law School, 1989–1991. In 1995, along with Sally B. Oken, a Florida licensed clinical social worker, Ms. Eisen organized Adoption Advisory Associates (“AAA”) as the social work arm of her Boca Raton law practice. Ms. Eisen and Ms. Oken brought AAA to Florida licensed child-placing agency status in 1996. Ms. Eisen supervises agency administrative functions. Her law firm, Cheryl R. Eisen, P.A., performs all agency legal services, and concentrates in the areas of adoption, child dependency, and child custody.

   The author wishes to thank Ryan E. Willits, Debra L. Frankel, and Joan Roses for their kind assistance.
III. UNWED FATHERS’ RIGHTS AS ADDRESSED BY SENATE BILL 550
A. An Irrebuttable Presumption of Fitness to Parent .....
B. Children at Risk ...........................................
C. When and Where to Protect the Child ..............
D. Equal Protection of the Laws ..........................

IV. A “BRIEF CASE PLAN” APPROACH TO
ADOPTION CONTESTS BY UNWED FATHERS .......... 363

V. OUTLINE FOR PROPOSED LEGISLATION ............. 366

VI. CONCLUSION ........................................ 382

APPENDIX A ........................................ 384
APPENDIX B ........................................ 385
APPENDIX C ........................................ 387
APPENDIX D ........................................ 388
APPENDIX E ........................................ 390
APPENDIX F ........................................ 397
APPENDIX G ........................................ 399
APPENDIX H ...................................... 401
APPENDIX I ...................................... 402
APPENDIX J ...................................... 403

I. INTRODUCTION

In most infant adoption cases contested by an unwed biological father, the child remains in the physical custody of the prospective adoptive parents, \(^1\) with no visitation with the birth mother or birth father, \(^2\) during legal

---

1. While awaiting termination of their biological parents’ rights, prospective adoptive children may be placed in foster care or in a prospective adoptive home. Placement in a prospective adoptive home prior to termination of parental rights creates a “legal risk” situation. Especially in the case of infant adoptions, however, an emphasis on “bonding” drives legal risk placements. See generally DOROTHY W. SMITH & LAURIE NEHLS SHERWEN, MOTHERS AND THEIR ADOPTED CHILDREN: THE BONDING PROCESS (2d ed. 1988). Adoption practitioners are best advised to require prospective adoptive parents to sign a “legal risk acknowledgement” at the time of placement. Such an acknowledgement is required by administrative rule in agency adoptions. FLA. ADMIN. CODE R. 65C-15.002(5), (6). See form infra Appendix A. (Unless otherwise indicated, the forms appearing as appendices to this article are the original work of the author for use by Adoption Advisory Associates and Cheryl R. Eisen, P.A., in agency adoptions. Readers are welcome to adapt and use these forms for their own practices, but no express or implied warranty is made as to their sufficiency or advisability, legal or otherwise.)

2. Technically speaking, one’s “birth father,” synonymous with the term “natural father,” is one’s biological father, whether known or unknown, whether married to one’s
proceedings which typically last for years. Thus, the child lives, during a critical period of his or her life, in a home and in a family from which he or she ultimately may be removed by court order. If removed, the child goes to the custody of a parent or parents with whom the child has no relationship, save a biological link that has become remote for the child by disconnection and the passage of considerable time. The extent of psychological damage, caused to the child by the emotional uprooting attendant upon such a change in physical custody, can only be hypothesized by the experts.

---

3. See In re B.G.C., 496 N.W.2d 239 (Iowa 1992) [hereinafter “Baby Jessica”]. In Iowa’s Baby Jessica case, the child was born in February, 1991. Id. at 240. Rehearing on the Iowa Supreme Court’s decision, affirming an intermediate appellate court’s decision to reverse a juvenile court’s termination of parental rights, was denied in November, 1992. Id. at 239. The total time elapsed from birth to denial of rehearing (and remand) was twenty-two and one-half months. Id. at 239–40.

See also In re Doe, 638 N.E.2d 181 (Ill. 1994) [hereinafter “Baby Richard”]. In Illinois’ Baby Richard case, the child was born in March, 1991, and placed with an adoptive family shortly thereafter. In re Doe, 627 N.E.2d 648, 650 (Ill. 1st Dist. Ct. App. 1993). The United States Supreme Court’s order, denying certiorari to the Illinois Supreme Court on its judgment reversing the trial court’s ruling that the father’s consent to the adoption was unnecessary, was entered in November, 1994. Doe v. Kirchner, 513 U.S. 994, 994 (1994). The total time that elapsed from birth to denial of certiorari was forty-four months. Id.

In Arkansas’ “Baby Sam” case, a procedurally complicated matter involving five separate trial court actions and three appeals in two states (one is still pending), the child, a newborn when litigation began, is over two years old at the time of this writing. Telephone conversation with Anthony R. Marchese, Florida attorney for Mark and Tracy Johnson, petitioners for adoption in the Juvenile Court of Tuscaloosa County, Ala., case no. JU 97-534.01 (July 24, 1998). The court granted custody of Baby Sam to the adoptive parents on April 28, 1998. See also Vitry v. Goronski, no. 96-2908 FD-14 (Fla. 6th Cir. Ct., Apr. 10, 1996) (related paternity action).

See also G.W.B. v. J.S.W., 658 So. 2d 961 (Fla. 1995) [hereinafter “Baby Emily”], and infra note 9 and accompanying text. In Florida’s Baby Emily case, the child was born in August, 1992. G.W.B. v. J.S.W., 647 So. 2d 918, 943 (Fla. 4th Dist. Ct. App. 1994). The Supreme Court of Florida’s decision, approving an intermediate appellate court’s order affirming the trial court’s final judgment of adoption, was handed down in July, 1995. Id. at 961. Total time elapsed from birth to final decision: thirty-five months. Id.

4. Under current Florida law, the child may in fact be put in the custody of another relative or in foster care if the contesting parent or parents cannot or should not have custody of the child. See Fla. STAT. § 39.811(1) (Supp. 1998).

5. Professor Suellyn Scarnecchia, of the Child Advocacy Law Clinic at the University of Michigan Law School, refers to this as “transfer trauma,” borrowing the term from O’Bannon v. Town Ct. Nursing Ctr., 447 U.S. 773, 802-03 (1980), where it “was used to
A. "Victimization" of the Child

In Florida's 1995 Baby Emily case, Supreme Court of Florida Justice Gerald Kogan, writing a separate opinion, characterized the child, whose unwed birth father contested her adoption, as "the most victimized party" in the case. Baby Emily was not removed from her adoptive home, and thus was not subjected to the psychological trauma referred to above. Rather,

describe the harm a patient was likely to suffer if moved from one nursing home to another." Suelynn Scarnecchia, A Child's Right to Protection from Transfer Trauma in a Contested Adoption Case, 2 DUKE J. GENDER L. & POL'Y 41, 47 n.22 (1995). See also Madelyn Simring Milchman, Ph.D., Bonding Trauma in Termination of Parental Rights Cases, 175 N.J. LAW. 29 (1996). Non-adoptive foster care during the pendency of a protracted adoption contest compounds the risk to the child, assuring that he or she will suffer at least one psychologically wrenching resettlement no matter who "wins" the lawsuit.


7. Id. at 971-79 (Kogan, J., concurring in part and dissenting in part).

8. Id. at 979.

9. G.W.B. v. J.S.W., 647 So. 2d 918, 944 (Fla. 4th Dist. Ct. App. 1994) (Appendix: original panel majority opinion). In Baby Emily, the child was placed for adoption by her birth mother at birth through a Florida attorney/intermediary. Id. at 943. The trial court initially found that there was insufficient evidence that the birth father had abandoned the birth mother during her pregnancy, and thus the child was not free for adoption. Id. at 944. Upon rehearing, however, the trial judge found that there was clear and convincing evidence that the birth father had financially and/or emotionally abandoned the birth mother during her pregnancy. Id. at 945. The court found that the birth mother was "on her own emotionally during the pregnancy" and that the birth father had resumed a sexual relationship with a former girlfriend while the birth mother was pregnant. Id. at 922. A three-judge panel of the Fourth District Court of Appeal reversed the trial court's finding of abandonment. G.W.B., 647 So. 2d at 920. Upon rehearing en banc, the district court reversed the panel decision and found that "for the final three months of her pregnancy, there was no financial support, no physical assistance in obtaining medical care, including pre-natal care, or for any of her other daily living requirements (and thus, as well, those of the unborn infant) and any emotional factor contributed by the father was a negative influence . . . the totality of the circumstances here are . . . in support of a finding of abandonment." Id. at 924 (emphasis the court's).

The Supreme Court of Florida held that "[t]he determination of abandonment is fact specific and, absent direction from the Legislature," it could not "dictate to trial courts precisely how to evaluate the factors that go into making this decision." G.W.B., 658 So. 2d at 966. The supreme court ruled that section 63.032(14) of the Florida Statutes allowed a trial court to consider emotional support in making its determination of abandonment and that the record revealed that once the birth mother had moved out of the home, the birth father provided no financial or emotional support. Id. at 966 (citing FLA. STAT. § 63.032(14) (Supp. 1992)). The supreme court noted the trial court's observation that the evidence suggested that the birth father might have continued his passive stance toward the birth mother and the child had the attorney/intermediary not contacted him regarding the adoption. Id. at 965. Even
the impossibility of returning the three-year-old, a newborn when the litigation began, to her *status quo ante*, to allow a dignified, timely, and uncompromised resolution of her future, whatever the outcome, appears to be what the Justice saw as insult to the child. Justice Kogan asked, "Where does the fault lie?" for the victimization of Baby Emily, and answered:

It rests on inadequate laws, procedural rules incapable of recognizing the needs of a small growing child, state agencies too unmindful of the biological father's rights, parties too eager to litigate, judges and lawyers who let the child's fate bog down in a quagmire of legal technicality. We all have failed Baby Emily.10

B. Kinship Rights and the Best Interests of the Child

Proceeding from a discussion of the United States Supreme Court's decision in *Lehr v. Robertson*,12 Justice Kogan suggested that the "two competing standards" of one, birth parents' biological kinship rights to the child and two, the best interests of the child, "both may actually have some

then, the record showed that the birth father still did not make any move to provide financial or emotional support to the birth mother or the unborn child. *Id.* The Supreme Court of Florida approved the district court's decision affirming the trial court's finding of abandonment. *Id.* at 967.

In her specially concurring opinion, then district court judge, now Supreme Court of Florida Justice Pariente, commented that a majority of the members of the Fourth District Court of Appeal were concerned about the conduct of attorney/intermediary Charlotte H. Danciu during the adoption proceedings. *G.W.B.*, 647 So. 2d at 930–31 (Pariente, J., concurring specially). However, upon a complaint to the Florida Bar by the birth father, Danciu was exonerated of any unethical conduct. Letter from David M. Barnovitz, Branch Staff Counsel, The Florida Bar, to Steven M. Pesso, Esq. (May 3, 1995) (on file with *Nova Law Review*). See infra Appendix B for the text of the letter.

10. *G.W.B.*, 658 So. 2d at 979 (Kogan, J., concurring in part, dissenting in part).
11. *Id.*
12. 463 U.S. 248 (1983). In *Lehr*, the United States Supreme Court decided the question of whether a New York putative father's due process and equal protection rights under the Constitution gave him an absolute right to notice and an opportunity to be heard before his child could be adopted. *Id.* at 249–50. Answering in the affirmative, the Court nevertheless held that the putative father's due process rights were not violated because the New York statutory scheme adequately protected his inchoate interest in assuming a responsible role in the future of his child in that the right to receive notice was completely within the putative father's control (by filing in a putative father registry). *Id.* at 256–65. Nor was the putative father's right to equal protection violated by the law, though it accorded different rights to the custodial parent and one who had either abandoned or never established a parental relationship with the child. *Id.* at 265–68.
relevance” to the resolution of unwed father cases. He referred to the Lehr Court as finding that unwed putative fathers possess only what may be called an “opportunity interest” in establishing legal fatherhood, which “matures into a due process right if ‘[they accept] some measure of responsibility for the child’s future.’” Justice Kogan then observed that “[t]he Lehr Court regrettably was silent as to how we should balance ‘best interests’ against kinship rights when the two are in irreconcilable conflict . . .”

C. Call for Reform

Seeking to solve this “legal conundrum,” and seeing “no solution that is free of tragedy,” Justice Kogan entreated the Family Law Rules Committee of The Florida Bar, and the Florida Legislature, to study methods of expediting contested adoption cases, and noted that “[l]awsuits of this type cry out for at least four broad reforms: (1) expedited review in the trial court; (2) expedited appeal; (3) swift and certain finality of court decisions;

13. G.W.B., 658 So. 2d at 973 (Kogan, J., concurring in part, dissenting in part).
14. Id. at 974 (emphasis added). See also, Roe v. Doe, 524 So. 2d 1037 (Fla. 5th Dist. Ct. App. 1988), wherein a Florida District Court certified the following question to the Supreme Court of Florida:

CAN THE FAILURE OF A PUTATIVE UNMARRIED FATHER TO ASSUME SUPPORT RESPONSIBILITIES AND MEDICAL EXPENSES FOR THE NATURAL MOTHER WHEN SHE REQUIRES SUCH ASSISTANCE AND HE IS AWARE OF HER NEEDS, BE A BASIS FOR A TRIAL COURT TO EXCUSE HIS CONSENT TO THE ADOPTION OF THE CHILD, ON THE GROUNDS OF ABANDONMENT OR ESTOPPEL, PURSUANT TO SECTION 63.072(1), FLORIDA STATUTES (1985).

Id. at 1044. In answering the certified question, the Supreme Court of Florida held that “an unwed father’s prebirth conduct in providing or failing to provide support . . . and medical expenses for the natural mother [was] relevant to the issue of abandonment under section 63.072(1) [of the Florida Statutes].” In the Matter of the Adoption of Doe, 543 So. 2d 741, 746 (Fla. 1989). The court went on to say:

[T]he failure of [a putative] father to provide prebirth assistance to [a] pregnant mother, when he was able and assistance was needed, vested [the] natural mother with the sole parental authority to consent to the adoption of the child and removed from the natural father the privilege of vetoing the adoption by refusing to give [his] consent.

Id. at 749. The holding was subsequently codified within the chapter 63 definition of “abandonment.” See FLA. STAT. § 63.032(14) (1997).

15. G.W.B., 658 So. 2d at 974 (Kogan, J., concurring in part, dissenting in part).
16. Id. at 979.
17. Id.
and (4) reasonable mechanisms to minimize psychological harm to the child during the legal process."

The first three of Justice Kogan’s requested reforms are well within the legislative and judicial branches’ ability to provide. However, what Justice Kogan observed as the silence of the Lehr Court as to how to balance “best interests” against kinship rights, resounds in the law’s failure, to date, to meet Justice Kogan’s fourth request, for mechanisms to minimize psychological harm to the child.

D. Evaluation of Performance

To protect the interests of both birth parents and children, Justice Kogan suggested a fixed period during which a contesting unwed putative father’s “performance” vis-à-vis his newborn (up to six months old) child could be evaluated by the state. Most birth fathers likely would dispute whether the state has the power to so impose upon their parental rights. However, as Justice Kogan reminded: “It deserves emphasis here that the unwed biological father’s constitutional interest over the child is not fully formed at this stage and therefore can be subjected to . . . reasonable restrictions or limitations.”

The performance approach to unwed father cases proposed by Justice Kogan is of the nature of what is known in child welfare and juvenile law circles as a “case plan” method. The case plan, a social service model for working through issues of social welfare, is already recognized in chapter 39 of the Florida Statutes as a hallmark of child dependency cases. As will be seen, this method is particularly well-suited to assist courts in balancing the bests interests of children and the kinship rights of their birth parents in contested adoption cases.

18. Id. at 979 n.21.
19. Id. at 976.
20. G.W.B., 658 So. 2d at 976.
21. See infra text accompanying notes 23-28. “Case plan” is defined in the Florida Administrative Code as “the goal-oriented, time limited individualized program of action for a child.” FLA. ADMIN. CODE 65C-15.001(13).
II. CHAPTERS 39 AND 63: AN ABBREVIATED OVERVIEW OF CURRENT FLORIDA STATUTES RELATING TO ADOPTION

For the reader unfamiliar with the nature and scope of chapters 39 and 63 of the Florida Statutes, a brief summary will be helpful in understanding the issues addressed in this article.

A. Florida Statutes Chapter 39 ("Proceedings Relating to Children")

Chapter 39 embraces "status" issues of child welfare. It provides the framework for disposition of cases involving allegations of child dependency due to abuse, neglect, or abandonment. In any dependency case, the parent or parents of the child are entitled to a case plan which includes goals for remediation, means to effectuate those goals, and methods to assess outcomes. The purpose of the case plan is to assist the family to remain intact or, where the child has been removed from the home, to reunify if and when the plan's goals are met. A dependency not otherwise resolved ends in an involuntary termination of parental rights and commitment of the child to the Florida Department of Children & Family Services ("the Department"), or to a Florida licensed child-placing agency ("licensed agency"). A chapter 39 proceeding for termination of parental rights is also initiated when a child is voluntarily "surrendered" for adoption to the Department or a licensed agency. In the case of a voluntary surrender, the case plan goal is termination of parental rights rather than reunification of the family.

The procedures established in chapter 39 for termination of parental rights assure parents of constitutional protection against unreasonable government interference with their liberty interest in rearing their children. For example, parents must be afforded the right to counsel, including court-appointed counsel if indigent, at every stage of the termination proceedings. Both the Department and otherwise "private"

25. Id.
28. Id. § 39.806(3).
29. "[A child's] natural parents have a fundamental liberty interest in the care, custody, and management of their children." G.W.B., 658 So. 2d at 966 (citing Santosky v. Kramer, 455 U.S. 745, 753 (1982)).
licensed agencies are subject to chapter 39 due process requirements. Presumably, licensed agencies are included in chapter 39 because they are licensed by the state for the purpose of providing services generally performed by the state itself, i.e., foster care and placement of children for adoption, thus functioning quasi-publicly as state "actors" for due process purposes.

32. See In re R. J. C., 300 So. 2d 54, 58 (Fla. 1st Dist. Ct. App. 1974).

The [Children's] Home Society [a licensed agency] contends that... [it] is not a 'foster home or agency of the state' and that the Order of Permanent Commitment [of the child to Children's Home Society] was not based on the inability or unfitness of the parents, but, rather, on the voluntary surrender of the child for subsequent adoption. We find these distinctions to be without merit... [It is our interpretation... that the Home Society should be considered a temporary foster home or, at the very least, an 'agency of the state.'

Id. at 58. See also Swayne v. L.D.S. Soc. Servs., 795 P.2d 637, 640 (Utah 1990) (holding private adoption agency was a "state actor" for due process purposes where termination of parental rights statute provided for automatic termination of unwed father's rights unless he had previously filed an acknowledgment of paternity). In Swayne, one member of the court did not agree that the self-executing statute rendered the private agency a state actor merely by its participation in the chain of events that rendered the father's rights terminated by operation of law. Swayne, 795 P.2d at 645 (Howe, Assoc. C.J., concurring and dissenting).

Simply because the legislature has provided... that the placement of an illegitimate child by his mother with an adoption agency terminates the opportunity for the father to register his claim of paternity does not, without more, turn every adoption agency into a "state actor."... It is undisputed that [the agency] receives no state funding and the state has no control over the agency's internal affairs. The cases simply do not support the theory that when a private person exercises a right or privilege granted by state law (such as to receive children for adoption), that person becomes a state actor. If that were so, every person licensed by the state in the various trades, occupations, and professions would become state actors.

Id. at 645 (emphasis added). In Florida, however, private agencies are not only licensed by the state, but their programs are closely regulated in many details. See generally Fla. Stat. § 409.175 (1997) (licensure of child-placing agencies); Fla. Admin. Code, ch. 65C-15 (child-placing agencies); and Fla. Admin. Code, ch. 10M-6 (foster home licensing by child-placing agencies).

Florida's Second District Court of Appeal, in determining that due process considerations required court-appointed counsel for an indigent father in a stepparent adoption, recently stated that "[u]ndoubtedly, state action is... an essential aspect of a contested adoption proceeding under chapter 63,... Although such litigation is between private parties, the power to terminate the rights of the nonconsenting parent is vested solely in the judicial branch of the state government." O.A.H. v. R.L.A., 712 So. 2d 4, 6 (1998). Accord In re K.L.J., 813 P.2d 276 (Alaska 1991); In re Jay [R.], 150 Cal. App. 3d...
Though a child whose parents' rights have been terminated in a chapter 39 proceeding is committed to the custody of the Department or a licensed agency for subsequent adoption, chapter 39 does not address the initiation, processing, and finalization of an adoption of the child. These matters are addressed in chapter 63.

B. Florida Statutes Chapter 63 ("Adoption")

Chapter 63 performs two functions in regulating adoption that are relevant to matters addressed in this article. First, it establishes the basic requirements for adoption in Florida, including, inter alia, who may be adopted, who may adopt, who must consent, jurisdiction, and venue. Second, chapter 63 limits, and imposes limitations upon, the entities, other than the Department and Florida licensed agencies, permitted to perform adoption placement activities in Florida.

251, 197 Cal. Rptr. 672 (1983); D.S. v. T.D.K., 499 N.W.2d 558 (N.D. 1993). The second district's opinion thus emphasized the nature of the right at issue, and the element of judicial participation in the process to extinguish that right, rather than the nature of the facilitator of the adoption (state agency, private agency, or private attorney) as determinative of the question of whether due process protections apply in proceedings wherein parental rights will be terminated. O.A.H., 712 So. 2d at 6-7. Query: Even where the termination of a parent's rights is consensual, is the right to counsel at least a waiveable right of the consenting parent, the absence of such waiver requiring court appointed-counsel if the parent is indigent?

33. FLA. STAT. § 39.811(2), (4) (Supp. 1998). After termination of parental rights under chapter 39, the Department or licensed agency having custody of the child is the only party who must consent to the child's subsequent adoption. Id. § 39.812(1).

34. See FLA. STAT. ch. 63 (1997).


36. Id. § 63.042(1).

37. Id. § 63.042(2), (3), (4).

38. Id. §§ 63.062, .072.

39. Id. §§ 63.102(2), .207(1).

40. FLA. STAT. §§ 63.102(2), (4).

41. Florida Statutes section 63.032(9) defines "to place" or "placement" as "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 agency participating in the process."

42. Limitations imposed on other entities making adoptive placements include the regulation of fees and expenses under section 63.097, and of out-of-state placements under section 63.207. FLA. STAT. §§ 63.097, .207 (1997).
Chapter 63 permits adoptive placements not only by the Department and Florida licensed agencies, but also by "intermediaries." An intermediary is a Florida licensed attorney or physician, or an out-of-state agency that has been qualified by the Department to place in Florida. As explained above, the Department and Florida licensed agencies may make adoptive placements upon either an involuntary or voluntary chapter 39 termination of parental rights. Intermediaries facilitate voluntary placements only, though such adoptions are occasionally contested, thus causing the proceedings to take on an involuntary aspect. Placements by intermediaries are not subject to chapter 39 termination proceedings, but are governed exclusively by the provisions of chapter 63.

In intermediary adoptions, a birth parent "consents" to the adoption of his or her child by either a specific named person or persons, or by a person or persons whose identity is known only to an intermediary. The form for consent to adoption, created by the Department for use by intermediaries as directed by statute, was last updated in 1986, and is inadequate in several respects. Nevertheless, comparison of the consent form with a "surrender" form of the type used by the Department and Florida licensed agencies reflects the organic differences between intermediary and Department/licensed agency adoptions.

Unless a parent's rights have been previously terminated within a chapter 39 proceeding or otherwise (including by the death of a parent),

43. Id. § 63.212(1)(c).
44. Id. § 63.032(8).
45. See supra notes 24–32 and accompanying text.
46. When adoptions are contested by birth parents, they are usually seeking to revoke a surrender or consent for adoption, or otherwise allege denial of due process. Fraud and duress are presently the only statutory grounds upon which a birth parent may revoke a surrender or consent for adoption. See infra note 66. Due process issues typically center on a birth father's failure to receive notice, or denial of a right to withhold consent. See supra notes 9–15 and accompanying text.
47. Fla. Stat. § 63.082(2).
48. Id. § 63.082(3)(a).
49. The form is defective in that: 1) it recites that the birth parent "agree[s] to relinquish" the child for adoption, thus giving rise to an argument that execution of the document does not necessarily show a present intention to place the child for adoption; 2) the statutorily required printed names, addresses and social security numbers of witnesses are not called for as required by statute, § 63.082(4) of the Florida Statutes; and 3) the jurat does not conform to current law requiring the notary to certify the type of identification upon which the notary relied in verifying the identity of the individual executing the instrument. See Fla. Stat. § 117.05(5) (1997). See form infra Appendix C.
50. See form infra Appendix D.
parental rights are not terminated in a chapter 63 adoption proceeding until the final judgment of adoption is entered. Thus, in intermediary adoptions, termination of parental rights to the child to be adopted occurs later and under different rules than in Department and Florida licensed agency adoptions.

C. A Need for Change

Dichotomies of law and procedure between chapter 39 and chapter 63 have caused confusion and irrational results in contested Florida adoption cases. This article suggests that Florida adoptions be processed exclusively as a function of chapter 39 termination of parental rights proceedings, within a unified statutory scheme embracing Department, agency, and intermediary placements. Such a revision of the law would promote greater uniformity in adoption actions, while affording optimal safeguards to protect not only the best interests of children, but also those of birth parents and prospective adoptive parents. This is because the law and procedures, as well as the judicial and administrative expertise, already in place for chapter 39 proceedings, form the most appropriate paradigm within which to address the legal issues presented in adoptions generally, and in contested adoptions, specifically.

The Florida Senate’s Committee on the Judiciary (“Judiciary Committee”) proposed Senate Bill 550 on adoption for consideration in the

52. An example is Jones v. Children’s Home Soc’y., 497 So. 2d 1265 (Fla. 5th Dist. Ct. App. 1986), wherein the court held that the chapter 63 provisions that a birth parent’s consent to adoption of a child is irrevocable upon signing, Florida Statutes section 63.082(5), did not apply to a surrender to the Department or a licensed agency under chapter 39. Id. at 1267. (Chapter 39 was amended to preclude this result by chapter 90-309 of the Laws of Florida (amending Fla. Stat. 39.464(1)(a)(2)), after the Supreme Court of Florida disapproved Jones on this point in Doe v. Roe, 543 So. 2d 741, 747–48 (Fla. 1989)). Only recently has a Florida court determined that indigent birth fathers are entitled to court-appointed counsel in chapter 63 proceedings wherein their parental rights are in jeopardy of termination, though right to counsel in such situations is not mandated by statute as in chapter 39 proceedings. See supra note 32.
53. See infra notes 102–03 and accompanying text.
54. The most active members of the Senate Judiciary Committee on Senate Bill 550 were Senators Dudley (R., S-25, Cape Coral) (chair); Campbell (D., S-33, Tamarac); Ostalkiewicz (R., S-12, Orlando); Rossin (D., S-35, West Palm Beach); and Silver (D., S-38, Aventura). The other members of the Committee were Senators Burt (R., S-16, Ormond Beach); Crist (R., S-20, St. Petersburg); Grant (R., S-13, Tampa); Horne (R., S-6, Orange Park); Jones (D., S-40, Miami)(vice-chair); and Williams (D., S-4, Tallahassee). Of these, all
1998 legislative session. The bill would have moved agency adoptions out of chapter 39 and into chapter 63. Senate Bill 550 purported to establish “parity” in private adoptions between Florida licensed agencies and intermediaries, and would have otherwise significantly altered Florida adoption law and practice. Though it won approval in the Senate, Senate Bill 550 did not garner support in the House of Representatives, and thus failed to pass into law. The bill’s Senate supporters have prefiled the same measure for consideration in the 1999 Legislature.

III. UNWED FATHERS’ RIGHTS AS ADDRESSED BY SENATE BILL 550

Before drafting Senate Bill 550, the Senate Judiciary Committee identified eight “areas of concern” for adoption legislation. Birth parents’

but Home and Williams are attorneys, though none is a family law or adoption specialist. Campbell is an adoptive parent and Jones has an adopted sister. It is unclear why the Judiciary Committee’s bill was not referred to the Senate’s Children, Families, & Seniors Committee for review and input.

56. See infra Appendix E for an analysis of the most significant aspects of the bill, prepared by the law firm of Hausmann & Hickman, P. A., Boynton Beach, Florida.
58. The bill has been filed as Senate Bill 0002 for 1999.
59. STAFF OF SENATE COMM. ON THE JUDICIARY, STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT, at 2–5 (Jan. 5, 1998). The eight concerns identified by the Senate Judiciary Committee centered on:

1. bifurcation of adoption proceedings, first determining termination of parental rights issues, then, if the child was determined in the first phase of the proceeding to be available for adoption, finalizing the adoption;
2. banning of “prebirth termination” of birth fathers’ parental rights;
3. improvement of safeguards to assure voluntariness of birth mothers’ consents;
4. assurance that birth parents are aware from their first contact with an intermediary arranging an adoptive placement that the attorney represents the adoptive parents’ interests, not the birth parents’;
5. creation of a centralized state repository for all adoption case records; codification of the present case law rule that “best interests of the child”
6. evidence is not relevant in any adoption proceeding until the birth parents’ rights have been terminated, and the child is thus available for adoption;
7. banning out-of-state placement for adoption of any child not falling within the Florida Statutes section 409.166 definition of a “special needs child” unless with a relative or stepparent; and
rights issues are embraced by at least four of the Judiciary Committee’s eight concerns. These concerns are collectively driven by just one immutable underlying principle: that birth parents, including unwed fathers, are entitled to a measure of due process protection in adoption proceedings. However, Senate Bill 550 moved perilously beyond the requirements of due process of law, into the realm of child endangerment, by allowing an unwed father the absolute right to veto a mother’s decision to place a child for adoption and, at the father’s option, to take custody of the child, regardless of his fitness to parent.

8. extension of the fee and expense reporting requirements imposed on adoption intermediaries to licensed adoption agencies.

Id. See supra note 59, “concerns” listed 1, 2, 4, and 6.

60. The United States Supreme Court has repeatedly identified parental rights as liberty interests protected by the Due Process Clause of the Fourteenth Amendment of the Constitution. See, e.g., Santosky v. Kramer, 455 U.S. 745, 747 (1982). In Santosky, the Court stated:

The fundamental liberty interest of natural parents in the care, custody and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State. Even when blood relationships are strained, parents retain a vital interest in preventing irretrievable destruction of their family life.

Id. at 753. This principle applies to cases where the parental rights of unwed fathers are being terminated. See Lehr v. Robertson, 463 U.S. 248 (1983), supra note 12, as well as Caban v. Mohammed, 441 U.S. 380 (1979); Quillioin v. Walcott, 434 U.S. 246 (1978); Stanley v. Illinois, 405 U.S. 645 (1972).

62. One provision of the bill severely limited a biological father’s rights where the mother is a married woman and the birth father is not her husband, the bill expressly provides that no notice to the birth father of the proceeding to terminate parental rights is required, whether or not the mother was cohabiting with her husband at the time of conception or birth.

SENATE COMM. ON THE JUDICIARY, COMM. SUBSTITUTE FOR S.B. 550, § 11, 15th Leg. Sess., Reg. Sess. (Fla. 1998) (proposing to amend FLA. STAT. § 63.062(l)(b), (c), and (d)(3) (Fla. Leg. 1997)). This concept follows Florida’s current paternity law. See G.F.C. v. S.G., 686 So. 2d 1382 (Fla. 5th Dist. Ct. App. 1997). “[T]he trial court properly dismissed G.F.C.’s petition because [the paternity statute] does not afford G.F.C. the statutory right to sue for paternity since the child in question . . . was not born ‘out of wedlock’ and the paternity of the child had been ‘otherwise’ established.” Id. at 1385. “Paternity would ‘otherwise’ be established when a child is born to an intact marriage and recognized by the husband and the mother as being their child.” Id.
In the typical contested case, an unwed birth mother surrenders her child for adoption, but the child’s father, who is alleged to have abandoned the child, objects. Senate Bill 550 proposed to address these circumstances by creating section 63.089 of the Florida Statutes, which concludes, in subsection (5), as follows:

If the court does not find by clear and convincing evidence that parental rights of a birth parent should be terminated pending adoption, the court must dismiss the case with prejudice and that birth parent’s parental rights remain in full force under the law. . . . The court must enter an order based [on] written findings providing for the placement of 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. 64

Thus, in the posited case, where the father has not consented to adoption of the child, Senate Bill 550 would have required a court to dismiss with prejudice a proceeding for termination of parental rights pending adoption (“TPRPA”) unless the court were to find sufficient clear and convincing evidence of the birth father’s abandonment65 of the child. As an incident to dismissal of the case, the court would have been required to make “findings” to support a “placement” for the child, with no statutory guidance as to what subjects such findings were to address, that is, what the criteria for placement would be.

v. H.H., 710 So. 2d 162, 162–63 (Fla. 2d Dist. Ct. App. 1998). The court certified the issue to the Supreme Court of Florida where the case remains pending. Id. at 166.


64. Id. (emphasis added).

65. "Abandoned" is defined as:

[A] situation in which the parent or 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 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.

FLA STAT. § 63.032(14) (1997).
A. An Irrefutable Presumption of Fitness to Parent

However, the question of the child’s placement upon dismissal of a Senate Bill 550 TPRPA proceeding may be a nonissue because, under the circumstances, the unwed father arguably would be the only legally available custodian for the child. The mother having signed an unrevoked consent for adoption,\(^6^6\) the father would be legally justified in insisting that the mother’s rights to the child be terminated before dismissal of the TPRPA action. There being no dependency action underlying the termination of parental rights proceeding, there would be no basis for placing the child in protective care pending an investigation of the father’s fitness to assume custody of the child.\(^6^7\) Further, there being no termination of the unwed father’s parental rights, the prospective adoptive parents would not be parties and would have no standing to request temporary legal custody of the child.\(^6^8\) Thus, under

\(^6^6\) Present law provides that a birth parent’s surrender or consent to adoption is irrevocable once executed, absent fraud or duress. See FLA. STAT. §§ 39.464(1)(a)(2), 63.082(5) (1997). Senate Bill 550 would have provided a three-day revocation period (or one day after a birth mother’s discharge from a hospital in the case of a newborn adoption, whichever occurs later) during which a birth parent could revoke a consent for any reason; thereafter, consent could be withdrawn only if it was obtained by fraud or duress. See SENATE COMM. ON THE JUDICIARY, COMM. SUBSTITUTE FOR S.B. 550, § 12, 15th Leg. Sess., Reg. Sess. (Fla. 1998) (proposing to amend FLA. STAT. § 63.082 (1997)).

\(^6^7\) In chapter 39 of the Florida Statutes, unless: a) both birth parents have surrendered the child for adoption; b) the identity of location of a parent is unknown; c) a parent has engaged in conduct toward the child which “threatens the life...[or] well-being...of the child irrespective of the provision of services” through a case plan; d) a parent is incarcerated under certain conditions; or e) a parent has engaged in “egregious conduct,” the only way to proceed to a final judgment of termination of parental rights is by first establishing that the child is “dependent” and then offering the parent(s) a case plan for reunification which fails. See FLA. STAT. § 39.806 (Supp. 1998).

\(^6^8\) The issue of standing of the prospective adoptive parents in the TPRPA proceeding under Senate Bill 550 is not entirely clear, however. One provision which might elevate them to party status states:

The petition must contain all names by which the minor is or has been known,...to allow interested parties to the action, including...persons with custodial or visitation rights to the minor, and persons entitled to notice pursuant to the Uniform Child Custody Jurisdiction Act...to identify their own interest in the action.

SENATE COMM. ON THE JUDICIARY, COMM. SUBSTITUTE FOR S.B. 550, § 14, 15th Leg. Sess., Reg. Sess. (Fla. 1998) (creating FLA. STAT. § 63.087(6)(f)(1) (1998) (emphasis added)). Should the prospective adoptive parents somehow fit within one of these classifications, perhaps party status would be theirs. Otherwise, though the prospective adoptive parents would become parties once an adoption petition is filed, the bill specifically provides that “[a] petition for adoption may not be filed until 30 days after the date the judge signed the
the language of Senate Bill 550, a court may well have had no alternative but to place the child with the unwed father, not only without regard to the possibility that the mother may have wanted to reclaim her parental rights if her adoption plan for the child was to be frustrated, but with no permissible antecedent inquiry into the prospective safety and security of the child clearly established by law.

Though it is fundamental that a biological parent enjoys the presumption of fitness to raise his or her child, this is a rebuttable presumption. Yet, as just seen, implicit in Senate Bill 550 was an irrebuttable presumption that an unwed father, by his mere refusal to agree to adoption of a child, is not only a fit parent, but is more fit than the mother to have custody.

judgment terminating parental rights pending adoption.” Id. (creating Fla. Stat. § 63.087(5) (emphasis added)). See also Senate Comm. on the Judiciary, Comm. Substitute for S.B. 550, § 19, 15th Leg. Sess., Reg. Sess. (Fla. 1998) (proposing to amend Fla. Stat. § 63.102 (“After a court order terminating parental rights has been issued, a proceeding for adoption may be commenced.”) (emphasis added)). By analogy to the Florida Rules of Juvenile Procedure, applicable in chapter 39 termination proceedings, the prospective adoptive parents likely would have no party standing. Fla. R. Juv. P. 8.210(a).

69. It would be easy, and wrong, to suggest that a birth mother who has voluntarily surrendered her child for adoption should not be permitted to reclaim the child if the birth father subsequently objects to the adoption plan. The fact that a mother has surrendered a child does not per se render her an unfit parent. On the contrary, Florida adoption professionals confirm that birth mothers- who surrender may well be fit to parent notwithstanding their decision to place. See infra Appendix F for “Results of Polling Florida Adoption Professionals Regarding Psycho/Social Backgrounds of Children Placed for Adoption” [hereinafter “Florida Adoption Professionals Poll”]. According to this poll, all responding adoption attorneys and social service professionals agreed that a mother who has surrendered should at least be permitted to request custody in these circumstances; 60% agreed with the following statement: “Matters should go back to the way they stood before the mother surrendered; the mother should have custody unless and until the father proves [she is] unfit.” Id. This is because some mothers make surrender decisions based upon assumptions or conclusions that have changed or may be subject to change. For example, before placing the child for adoption, birth mothers oftentimes refuse to explore the possibility of family support of parenting their children, often keeping their pregnancies secret for fear of family recrimination or disapproval. If the fact of the birth becomes known to the family during an adoption contest, the birth mother may find support she had not otherwise expected.

70. See, e.g., Calle v. Calle, 625 So. 2d 988, 990 (Fla. 3d Dist. Ct. App. 1993).
71. S.B. 550, 15th Leg. Sess., Reg. Sess. (Fla. 1998). It is very significant that Senate Bill 550 did not in fact require the objecting father to request custody of the child in order to stop the mother’s adoption plan. Id. Thus, he could veto the adoption without offering the child an alternative plan to raise the child himself.
72. See discussion supra note 69. A bias against birth mothers who surrender their children for adoption appears evident in the fact that, despite the issue of fathers’ fitness being
B. Children at Risk

The decisions or actions of adults which bring a child to a court's attention tend to reflect the presence of insecurity, instability, and even the danger of abuse or neglect in the life of the child. There is no reason to expect that the circumstances which bring a child before a court when an unwed father contests the mother's adoption plan for their child are any more pristine or benign than in other cases where child custody is at issue. On the contrary, a child in these circumstances is "at risk" by any criteria used for such assessments in child welfare cases.

"The quality of the research on child abuse and neglect" is considered by social scientists to have advanced "in the 1970s and 1980s," providing improved information through the use of "statistical analyses based [upon] official reports [and] social surveys." Theories based on this improved research developed the theme that "anyone" could abuse [or neglect] his or her child in certain circumstances: when the stresses on them outweigh[] the supports they [have]." If anyone can abuse or neglect, then it is logical that any child may be abused or neglected if the circumstances are right.

To determine the risk of child abuse or neglect for a given child, various risk assessment models have been developed by social science scholars and social service professionals. What these models have in common is repeatedly raised before the Judiciary Committee by this author, the only attention given to parental fitness was in an eleventh hour floor amendment ("FAV 704320") permitting an adoption entity to move a court for emergency relief to at least temporarily deny custody of a child to a parent revoking consent to adoption if it is alleged that such a placement would endanger the child. See Memorandum from Maggie A. Moody on C.S./S.B. 550 on Adoption to the Adoption Round Table Members and Interested Parties (Apr. 17, 1998) (on file with the Nova Law Review) (citing FAV 704320, 4/15/98). See also SENATE COMM. ON THE JUDICIARY, COMM. SUBSTITUTE FOR S.B. 550, § 12, 15th Leg. Sess., Reg. Sess. (Fla. 1998) (creating FLA. STAT. § 63.082 (7) (1998)). In the majority of cases, consents are executed by mothers only. Thus, Senate Bill 550 would have created the unreasoned policy that a birth mother's fitness may be called into question if she seeks to exercise her statutory right of revocation of consent proposed in the bill, but a putative birth father may have custody without regard to his fitness.

It should be noted that FAV 704320 did not address the issue of to whom an adoption entity should give custody of a child when both birth parents revoke their respective consents to adoption.

74. Id. at 82.
75. Id. at 80–86 (offering a general discussion of risk assessment factors and models).
recognition of the nature of the factors that put children at risk.\textsuperscript{76} Though generalization may offend, experienced Florida adoption professionals confirm that the sociological profiles of children placed for adoption often include many of the commonly recognized risk factors for abuse and neglect.\textsuperscript{77}

Furthermore, a mother’s surrender of her rights to a child may, in some cases, demonstrate her recognition of the child being at risk in some way. This recognition may arise not only from a mother’s belief that she cannot successfully parent the child,\textsuperscript{78} but also from her negative evaluation of the

\textsuperscript{76. Id.}

\textsuperscript{77. See infra Appendix F for the Florida Adoption Professionals Poll results. Seventy percent of Florida adoption attorneys and social service professionals responding to a recent survey identified “decreased emotional/mental stability and control, including immaturity due to young age” as a risk factor, one-third responding that this characteristic was “typical” of the psycho-social backgrounds of children under the age of five in whose adoptions the respondents had been professionally involved. Id. Eighty percent identified “parent engaging in or having history of alcohol/substance abuse [or] gambling” and “parent having history of perpetrating or being victim of abuse [or] neglect” as risk factors, approximately one in five reporting that the cases with which they were familiar “typically” involved these factors, and half or more seeing these factors present “occasionally.” Id.}

\textsuperscript{78. Situations with which the public is most familiar are from news stories reporting cases representing the two extremes of birth mother conduct. These two extremes denote scenarios in which the birth mother did not want to parent. They are: 1) where the mother abandons the child at birth, sometimes apparently intending that the child should die; and 2) where the mother asserts, after having surrendered her child for adoption, that she was forced, duped, or otherwise taken advantage of, such that the child should be returned to her.

The vast majority of cases fall somewhere between these two scenarios. The middle ground is populated by mothers generally ranging in age between 15 and 35, who may or may not be married, who may or may not have other children, who may or may not be receiving public assistance, who may or may not have informed their families of their adoption plans, who may or may not have been abused by the birth father of the child, who may or may not be school drop-outs or college educated, who may or may not have a history of incarceration or psychiatric admission, and who may or may not have a history of substance abuse. The birth mother’s belief that she cannot successfully parent the child, and thus that an adoption plan is best, is affected by all of these factors, and more, in varying degrees.

It is very important that a birth mother receive meaningful preplacement counseling to enable her to clearly identify for herself her reasons for making an adoption plan for her child. If a birth mother has not been given this opportunity, or has refused to process this question, one of two results may occur: either 1) after committing herself to an adoption plan, the birth mother may come to realize, typically shortly before or immediately after the birth, that she cannot go through with the placement; or 2) the birth mother will place the child for adoption, but will suffer sometimes interminable grief and remorse with no hope of closure. Postplacement counseling to assist in a birth mother’s continuing adjustment post-partum is as important as preplacement counseling, to help the birth mother through the mourning period associated with placing a child for adoption.
birth father as a prospective parent. This is not to say that a mother should be permitted to veto a father's custody of a child. However, there is no good reason for not investigating the grounds for a mother's warning that a child may be at risk if placed with the unwed father.

C. When and Where to Protect the Child

It was contended by proponents of Senate Bill 550 that any question of the child's security or safety, if placed with a contesting birth father, could be adequately addressed in a dependency action under chapter 39 of the Florida Statutes. However, that contention does not recognize that, under the bill, a dependency action could not be filed under conditions most likely to protect the child. First, because such an action was characterized in the bill as a "further" proceeding, it appears that the statutory scheme would have required any dependency action to be brought subsequent to dismissal of the TPRPA proceeding. Second, the dependency action would have been a "separate" proceeding in a different court. Given these requirements,

79. A birth mother's negative opinion of a birth father, as a prospective parent, may be grounded in any number of observations about the father, including matters ranging from his personal family background, to his present lifestyle (including relationships with and support of his other children, if any), to his stated feelings about parenthood. To be sure, just as in the case of divorce, acrimony between the parents of a child cannot per se divest one or the other of their parental rights. Nevertheless, information provided by the parents is generally a useful starting point for custody evaluation.

80. In fact, Florida law would hold a parent criminally responsible for abuse or neglect perpetrated by the other parent which could have been prevented or stopped by the actions of the "innocent" parent. See FLA. STAT. § 827.03(3)(a)(2), (3)(b) (1997); see also In re B.S., 697 So. 2d 914 (Fla. 2d Dist. Ct. App. 1997) (holding that the termination of mother's parental rights was warranted by her knowing failure, despite having the opportunity and capability, to prevent egregious abuse of child perpetrated by father, when mother acquiesced in father's supervision of the child in her absence, notwithstanding father's history of pleading guilty in manslaughter of another child, his four week old son, and repeated suspicious grave injuries previously sustained by the child).

The "at risk" analysis in the text is also applicable, and a case plan method, like the one described and set forth in the text accompanying notes 97–138, infra, could be used, where a parent who has surrendered a child for adoption seeks to revoke the surrender under the revocation provisions of the bill. See SENATE COMM. ON THE JUDICIARY, COMM. SUBSTITUTE FOR S.B. 550, § 12, 15th Leg. Sess., Reg. Sess. (Fla. 1998) (creating FLA. STAT. § 63.082(7) (Supp. 1998)).

83. Id.
the opportunity to provide preemptive social services before dismissing the termination proceeding would be lost in favor of requiring a report of suspected abuse, neglect, or abandonment before intervention. Thus, notwithstanding both what is known of the underpinnings of abuse and neglect and, in given cases, a mother’s concerns about a father’s fitness to parent, Senate Bill 550 would have permitted unnecessary risk to the children by requiring courts to “look the other way” when dismissing TPRPA proceedings.

D. Equal Protection of the Laws

Proponents of Senate Bill 550 also suggested that imposing a “fitness test” upon an unwed father before allowing him custody of a child is irrational and a violation of the constitutional right of equal protection of the laws, because a married father is not subject to the same test on his way out of the hospital with his wife and newborn baby.

Seductively simple, this argument is nevertheless inapt. It completely disregards marriage as a legally significant social contract between society and the participants in the marriage. One important covenant of that

84. Senate Bill 550 would have established the TPRPA proceeding within chapter 63 of the Florida Statutes. SENATE COMM. ON THE JUDICIARY, COMM. SUBSTITUTE FOR S.B. 550, § 16, 15th Leg. Sess., Reg. Sess. (Fla. 1998). Though the bill does not assign chapter 63 matters to the family division of the circuit court, that is where chapter 63 cases have been assigned throughout the state for some time. Id. Chapter 39 dependency proceedings, on the other hand, are within the purview of the juvenile division. Id. The procedural requirements involved in keeping one judge “on the case,” obtaining a consolidation order, waste precious time and effort when a child’s welfare is at stake. Id.

85. Primary among the social services that should be made available to a parent contesting an adoption should be parenting education such as set forth in the “Outline for Proposed Legislation” beginning infra at the accompanying note 112.

86. These are the grounds for government intervention in the parent-child relationship regarding a child not otherwise before a court. See supra text accompanying notes 23–31.

87. State statutes often distinguish between the parental rights of unwed mothers and those of unwed fathers. Such statutes have been attacked as violative of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, though such challenges are less successful than those brought under the Due Process Clause. See supra note 61 for leading cases.


The consent of the parties is of course essential to its existence, but when the contract to marry is executed by the marriage, a relation between the parties is created which they cannot change. Other contracts may be modified, restricted, or enlarged, or entirely released upon the consent of the parties. Not so with marriage. The relation once formed, the law steps in and holds
contract is that the married couple will be co-responsible for the welfare of children born to the wife or adopted during the marriage. 89 This being so, it can be said that the parenting of children is seen by society as a cooperative venture between a mother and a father where each vouches for the continuing fitness of the other to parent. At any time, one or the other parent, or a government agency, may bring to the attention of society, in a civil or criminal proceeding, that the security and/or safety of the child can no longer be assumed. In such event, a court must ultimately decide what custody disposition will be in the child's "best interests."90

the parties to various obligations and liabilities. It is an institution,... the foundation of the family and of society.

Id. at 211.

89. Indeed, the fact that a married man suspects he is not the father of a child born to his wife does not automatically entitle him to require paternity testing in support of a challenge of his obligation of support to the child. Such testing must be court ordered, and will not be ordered if not determined by the court to be in the best interests of the child. See Fla. Stat. § 742.12(2) (1997) ("the court may... require the child, mother, and alleged fathers to submit to scientific tests... to show a probability of paternity") (emphasis added). Compare Department of Health & Rehabilitative Serv. v. Privette, 617 So. 2d 305, 308 (Fla. 1993) (holding that a trial court hearing a petition for paternity must determine "that the child's best interests will be better served [by ordering a blood test] even if the blood test later proves the child's factual illegitimacy"), with In re Paternity of Baby Doe, 558 N.W.2d 897 (Wis. Ct. App. 1996) (holding that the putative father of a child born out-of-wedlock has a statutory right to a determination of paternity and the court may not conduct a best interests hearing as a prerequisite for ordering blood tests).

90. For an interesting summary of the history of adopin in America, including the evolution of the concept of "best intrest of the child" in the adoption context, see 1 JOAN HEIFETZ HOLLINGER, ADOPTION LAW AND PRACTICE, §§ 1.01-1.04 (1998). Hollinger explains:

[A] distinctive feature of America’s first adoption statutes was the requirement of a judicial finding that the adopters were ‘suitable’ and that the ‘moral and temporal’ or best interests of the child would be served. Until well into the 20th century, however, little was done to breathe life into this requirement. . . ‘Suitability,’ if scrutinized at all, was defined primarily in terms of the financial solvency of the adoptive parents. The child’s ‘moral and temporal’ interests, or what would now be called the child’s ‘best interests,’ were similarly defined more in economic than in psychological terms.

Id. § 1.03[2]. “Even as late as 1930, . . . the best interest standard was confined to the economic interest of the child.” Id. § 1.03[7]. Today, “psychological and social conceptions of children’s well-being have displaced the earlier economic and moralistic ones. With this has come a new understanding of why adoption is ‘good’ for children, adoptive parents and birth parents.” Id. § 1.04.
Equal protection of the laws would certainly demand that an unwed father not enjoy a greater presumption of fitness to parent than a married father. Nevertheless, this would be the result if, as Senate Bill 550 appears to have required, a child must be placed with an unwed father, regardless of the fact that the child's unwed mother does not vouch for the father's fitness to parent. On the contrary, where the mother has demonstrated her belief that the child should be placed for adoption rather than be in the unwed father's care, society has no alternative but to take seriously the mother's concern and investigate the fitness of the father to parent before giving him custody of the child.

It might also be argued that a “test” for unwed fathers contesting adoption of a child is irrational in light of the fact that an unwed mother who chooses from the outset to parent, rather than place a child for adoption, is not similarly scrutinized. Such an argument would miss the point that it is not a parent’s “unwed” status per se which calls his or her fitness into question. Indeed, two unwed parents who agree extrajudicially on custody and other matters regarding their child may never see the inside of a courtroom. Rather, in a contested adoption, it is precisely because the unwed parents have not agreed on a plan for their child, for whatever reason, that the child has come to public attention. In contrast, society’s

91. The fact that the mother could have spared herself of the entire adoption process by giving the child to the father to raise, if she perceived that as a feasible and desirable alternative, should not be discounted in determining whether to heed her negative assessment of the father’s fitness to parent.

92. It bears mentioning here that there appears to have been disturbing implicit assumptions about the motivations of birth parents in Senate Bill 550: a) the unsupported negative assumption that a birth mother does not usually have valid, compelling reasons for believing that the birth father of her child is or may be unfit to raise the child, or has no real interest in raising the child; and b) the unsupported positive assumption that birth fathers who make objections to adoptive placements do so only for the reason that they wish to create homes for their children and raise them themselves. S.B. 550, 15th Leg. Sess., Reg. Sess. (Fla. 1998). Though the occasional birth parent fits one or the other of these stereotypes, these are hardly typical profiles. Id. As in so many other matters of human concern, there are very few, if any, hard and fast rules in the sociolegal context of adoption. Id.

93. The parents may have reached no agreement regarding the child for any number of reasons, including: 1) that the mother does not know the identity and/or location of the father; 2) that the father informs the mother that he has no interest in the child or denies paternity; 3) that though the father is aware of the pregnancy, the mother informs him of her intention to have an abortion and then relocates such that the father has no means of following up to determine whether the pregnancy was terminated; 4) that there is generalized antipathy between the parents, resulting in their inability to interact for the purpose of making crucial parenting decisions; 5) the parents disagree on fundamental issues regarding custody, support, education, visitation, etc.; or 6) the pregnancy was the result of sexual assault.
social contract with married couples presumes that husbands and wives share jointly the rights and responsibilities of the care, custody, and control of their children.

It should be noted that the imperative to fully protect a child brought within a court’s jurisdiction is the reason the law dictates that prospective adoptive parents participate in a "home study" before they can be eligible to adopt.94 Further, a court must find a proposed adoption to be in the child’s best interests at the time of finalization.95 Absent the duty to protect children placed for adoption, there could be no justification for such interference with an infertile couple’s plans for building a family. Instead, analogizing to Senate Bill 550’s illogic in setting the scene for automatic placement of children surrendered for adoption with contesting unwed fathers, the law would permit just anyone to adopt, and hope for the best.96

94. FLA. STAT. § 63.092 (Supp. 1998).
95. Section 63.092 of the Florida Statutes provides:
(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 licensed professional, or agency described in [section] 61.20(2). . . . 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 [section] 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;
(h) A copy of the signed statement required by [section] 63.085(1).
(i) A copy of the written acknowledgment required by [section] 63.085(1).
FLA. STAT. § 63.092 (Supp. 1998).
IV. A "BRIEF CASE PLAN" APPROACH TO ADOPTION CONTESTS BY UNWED FATHERS

As previously explained, the United States Supreme Court recognizes a state's right to impose limitations relating to the welfare of children upon unwed fathers' parental rights. However, because the dynamics of individual cases cannot be assessed in advance, limitations which will safeguard a particular child cannot be adequately legislated. Instead, what is reasonable is to establish legislative parameters within which appropriately licensed professionals may assess specific cases and make recommendations to courts regarding child custody in contested adoptions, while providing concurrent judicial processes to move cases to expeditious conclusion. Building upon Justice Kogan's previously discussed "performance" concept, Senate Bill 550 should be rethought with regard to birth fathers' rights. The "brief case plan" approach outlined at the end of

97. The term "brief case plan" is used to describe the method proposed in this article for resolving contested adoptions by unwed fathers. The move toward alternative dispute resolution based on "brief" models is already recognized among child welfare professionals as demonstrated by the currency of the use of "brief therapy" and "brief evaluation" as case management tools in dependency cases. Though it is anticipated that the situations in which a brief case plan proposal would be brought into operation would be where a birth mother has executed an irrevocable surrender of the child for adoption, such that only birth father issues remain to be resolved, this proposal anticipates: 1) instances where the birth mother seeks to revoke her surrender, either alleging fraud or duress, or revocation pursuant to a statutory revocation provision such as that proposed in Senate Bill 550 (See SENATE COMM. ON THE JUDICIARY, COMM. SUBSTITUTE FOR S.B. 550, § 12, 15th Leg. Sess., Reg. Sess. (Fla. 1998) (proposing to amend FLA. STAT. § 63.082(4)(c) (1997)); and 2) those instances where the court determines that the birth father's rights cannot be terminated and thus the custody of the child is subject to contest between the biological parents.

98. See supra notes 12–23 and accompanying text.

99. Chapter 63 of the Florida Statutes incorporates by reference a listing of mental health professionals approved for conducting home study evaluations of prospective adoptive parents in intermediary adoptions. See FLA. STAT. § 63.092(2) (Supp. 1998). The listing is contained in section 61.20(2) of the Florida Statutes as follows: A social investigation and study, when ordered by the court, shall be conducted by qualified staff of the court; a child-placing agency licensed pursuant to [section] 409.175; a psychologist licensed pursuant to chapter 490; or a clinical social worker, marriage and family therapist, or mental health counselor licensed pursuant to chapter 491.

FLA. STAT. § 61.20(2) (1997). These professionals, depending upon their experience, may be appropriate for this purpose.

100. See supra notes 19–23 and accompanying text.
the next section ("the Outline") is suggested as a framework for appropriate legislation.101

Parts I through III102 of the Outline address the basic issues of "who, what, when, where, and how" as to the initial court procedures required to process a birth parent's surrender of a child for adoption, regardless of the child's age. Important features of these initial procedures include: 1) adoption proceedings beginning and ending in juvenile courts, where the most judicial experience in balancing child protection issues with the preservation of parents' rights is concentrated, and where court rules which facilitate such proceedings are already in place;103 2) the possibility of filing prebirth a petition to terminate parental rights to facilitate early identification of interested parties (though termination would occur, if at all, only after birth of the child);104 and 3) including in all surrenders an agreement to submit to DNA testing, with or without a court order.

101. A detailed outline of suggested legislation is provided rather than a proposal cast in bill form. This is because the proposal is made for revision of chapter 39 (Juvenile Proceedings) to move all adoption matters into Juvenile Court, rather than for amendment of chapter 63 (Adoption), even though the present legislative will appears to be in favor of proposing to amend chapter 63. If the proposed policy were to be amended into chapter 63, it is suggested that it be inserted immediately following section 63.032 (Definitions), and before section 63.042 (Who may be adopted; who may adopt). If placed in chapter 39, it is suggested that a new Part XII be created for adoption.

102. See infra notes 112–27 and accompanying text.

103. This proposal conflicts with Senate Bill 550 as to whether termination of parental rights and adoption proceedings should come within the purview of juvenile courts under chapter 39 of the Florida Statutes, as advocated here, or within the authority of the family courts under chapter 63, as proposed in the bill.

There is presently only one provision in the family court rules, approved by the Supreme Court of Florida in 1998, relating to adoption. See Fla. Fam. L. R. P. 12.200(a)(2) (requiring the court to order a case management conference within sixty (60) days of the filing of an adoption petition when: a) a waiver of consent is requested; b) "notice of the hearing on the petition . . . is not [to be] afforded a person whose consent is required but has not consented;" c) "an intermediary, attorney, or agency is seeking fees or costs in excess of those provided [by statute];" d) a party is to be served by constructive rather than personal service; or e) "the court is otherwise aware that any person having standing objects to the adoption"). Fla. Fam. L. R. P. 12.200(a)(2).

104. The filing of a prebirth petition for termination of parental rights would create a more satisfactory basis for contacting a prospective father of a child to determine his intentions toward the child once born. Service upon such individuals before birth would tend to reduce the instance of ambiguity in the birth father's position regarding the child. It sets the stage for a more expeditious resolution of the child's status once born. If all prospective fathers have been served by the time of birth, the case plan proposed can commence immediately, thus reducing considerably the period of time after birth required to resolve the child's status. See G.W.B. v. J.S.W., 647 So. 2d 918, 931 (Fla. 4th Dist. Ct. App. 1994), rev'd, 652 So. 2d
Part IV of the Outline establishes the beginning of “fast track” court proceedings to resolve the child’s future. Unless a court determines that clear and convincing evidence of grounds for termination of the parental rights of both parents already exist at the time of a preliminary hearing, this procedure would provide the child with a brief case plan. The duration of the case plan would be sixty days from the birth of the child, or the date of the plan, whichever is later, or a lesser or greater period, if agreed upon by the parties to the petition to terminate parental rights.

An evidentiary hearing is required to determine contested issues as to termination of parental rights during the pendency of the case plan. Upon expiration of the case plan, and depending upon whether the child was under or over 180 days old, that is, an infant, at the time the petition for termination of parental rights was filed, the proceedings would move in one of several directions. Where an infant is involved, the case would go to a disposition phase. In the case of non-infants, the court would permit, on motion, the filing of a custody action under chapter 61 of the Florida Statutes, a dependency action under chapter 39, or a paternity action under chapter 742, within the same proceeding.

The requirements of the case plan, set forth in Part VI of the Outline, are intended to provide positive support to any party, as defined, seeking custody of the child, while allowing an objective study of such person’s desire and ability to parent. The study requirements are comparable to those imposed upon nonparty prospective adoptive parents under current law. The concept of “constructive abandonment,” a parent’s demonstrated unwillingness or gross inability to parent the child prospectively, is created to address situations where the results of the case plan justify termination of parental rights. The proposal also permits an unexpired case plan to be curtailed if a court finds that the plan has become unnecessary due to a change in circumstances.

The timetable established by the case plan proposal for contested cases limits trial court proceedings for termination of parental rights to a maximum

816 (Fla. 1995), decision approved by 658 So. 2d 961 (1995) (Pariente, J., concurring) (advocating this concept in theory).

105. See infra text accompanying note 128.
106. See infra text accompanying notes 133.
107. The “party seeking custody” may be either the mother or the father, or both. The proposal provides that if parental rights are not terminated at an evidentiary hearing, such that the case plan is extended for the purpose of determining a proper placement of the child, the mother’s surrender may be nullified by the court.

of 147 days after service of process, with the case plan running concurrently. Review in the district court, and certiorari and appeal to higher courts remain available, though it is expected that good social work will minimize the number of cases moving beyond the trial court level.

Finally, the provision for repose suggested in Part XI of the Outline is keyed to the date of final judgment of the adoption of a child, rather than to the date of termination of parental rights as was proposed in Senate Bill 550. This is meant to discourage prospective adoptive parents from waiting for repose before psychologically and legally finalizing the child’s adoption. The suggested time for repose is 180 days.

V. OUTLINE FOR PROPOSED LEGISLATION

I. Initiation of a Proceeding for Termination of Parental Rights upon Parent’s Surrender. In all cases where a parent (“the Parent”) of a child (“the Child”) surrenders the Child for adoption to an adoption entity (“Adoption Entity”) licensed or authorized in this state, a petition (“Petition”) for termination of parental rights pending adoption (“TPRPA”) shall be filed in the juvenile division of the circuit court (“the Court”) of this state, in the county where the Adoption Entity is located, no more than seven (7) days after the Parent’s surrender is executed. No fee for filing the Petition shall be charged by the Clerk of Court (“the

---

109. See infra text following note 138.


111. Id.

112. Senate Bill 550 coined the term “adoption entity” as an umbrella designation for all persons and organizations permitted to place children for adoption in Florida. S.B. 550, 15th Leg. Sess., Reg. Sess. (Fla. 1998). See Senate Comm. on the Judiciary, Comm. Substitute for S.B. 550, § 6, 15th Leg. Sess., Reg. Sess. (Fla. 1998) (proposing to amend Fla. Stat. § 63.032 by adding sub-section (15) which reads as follows: “‘Adoption Entity’ means the department under chapter 39; an agency under chapter 63 or, at the request of the department, under chapter 39; or an intermediary under chapter 63, placing a person for adoption.”).

113. This provision regarding venue adopts current law regarding venue for agency adoptions. See Fla. Stat. § 63.102(2) (1997).

114. This time period accommodates the birth mother’s statutory right of revocation of her consent as proposed in Senate Comm. on the Judiciary, Comm. Substitute for S.B. 550, § 12, 15th Leg. Sess., Reg. Sess. (Fla. 1998) (proposing to amend Fla. Stat. § 63.082(4)(c) (1997)).
If any other proceeding regarding the Child was initiated in the a division of the circuit court of this state prior to the time of filing the TPRPA Petition, the TPRPA action shall be filed in the existing case. Any action previously filed in any court in this state other than a juvenile division of the circuit court shall be, if necessary, consolidated into the TPRPA action.

**Prebirth Petitions.** A prebirth Petition may be filed to facilitate the process of providing notice of the intention of the mother ("the Mother") to surrender the Child for adoption at birth, to any man who may be, or may claim to be, the legal and/or biological father of the Child ("Prospective Father"). Nevertheless, no surrender of a child shall be executed, and no order terminating the parental rights of a child's parent(s) shall be entered, until after the birth of a child.

**Agreement to Provide Biologic Material for Paternity Testing.** A surrender of a child for adoption shall contain a provision that the party signing the surrender agrees to provide biologic material necessary for the purpose of establishing the identity of the biological father of the Child, with or without a court order.

### II. Advisory Hearing; Appointment of Guardian Ad Litem; Temporary Custody.

At the time of filing the Petition, Petitioner

---


116. Present statutory law provides that in intermediary adoptions, the intermediary must report any intended placement of a minor for adoption before the child is placed in the prospective adoptive home (unless it is a family or stepparent adoption). **Fla. Stat.** § 63.092(1) (Supp. 1998). Senate Bill 550 would have perpetuated this requirement, and extended it to all "adoption entities." *See Senate Comm. on the Judiciary, Comm. Substitute for S.B. 550, § 17, 15th Leg. Sess., Reg. Sess. (Fla. 1998) (proposing to amend Fla. Stat. § 63.092(1) (1998)).* If this reporting requirement is to be retained, the report should be filed in juvenile court, with the petition for TPRPA being filed in the same proceeding. Section 63.102(5) of the **Florida Statutes** permits the filing of a "petition for declaratory statement" for "prior approval of fees and costs" in connection with a proposed placement. **Fla. Stat.** § 63.102(5) (1997). If such a petition is to be filed, it would likewise be filed in the juvenile court wherein the notice of intent to place is filed.

117. The "no prebirth surrender" requirement is presently the law, as provided by statute. **Fla. Stat.** § 63.082(4) (1997).
shall assure that the Clerk will set an advisory hearing ("Advisory Hearing"), to be held within seven (7) days, at which time the Court shall: a) appoint a guardian ad litem ("the GAL") for the Child;\textsuperscript{118} b) make a determination of temporary custody of the Child, which may be with the Prospective Adoptive Parents or in foster care, whichever appears to be in the best interests of the Child considering the facts and circumstances of the case; and c) determine who, if anyone, shall have temporary visitation with the Child.

III. \textbf{Parties.} The necessary parties to the TPRPA proceeding shall be: a) the Adoption Entity to which a Parent has surrendered or intends to surrender the Child for adoption, as petitioner ("the Petitioner"); b) the Mother;\textsuperscript{119} c) any Prospective Father of the Child, including those identifiable through the inquiry outlined in section 39.803 of the \textit{Florida Statutes};\textsuperscript{120} d) any other person or

\textsuperscript{118} Section 39.807(2)(b) of the \textit{Florida Statutes} provides:

The guardian ad litem has the following responsibilities:

\begin{itemize}
  \item To investigate the allegations of the petition and any subsequent matters arising in the case and, unless excused by the court, to file a written report. This report must include a statement of the wishes of the child and the recommendations of the guardian ad litem and must be provided to all parties and the court at least [forty-eight] hours before the disposition hearing.
  \item To be present at all court hearings unless excused by the court.
  \item To represent the interests of the child until the jurisdiction of the court over the child terminates or until excused by the court.
  \item To perform such other duties and undertake such other responsibilities as the court may direct.
\end{itemize}

\textit{FLA. STAT. § 39.807(2)(b) (Supp. 1998).}

\textsuperscript{119} Though the mother's surrender would be irrevocable except upon a showing of fraud or duress (unless a revocation period for surrender, such as that proposed in Senate Bill 550, were available) the mother's rights are not terminated automatically, but require judicial action. Where a mother who has surrendered decides to contest on the grounds of revocation, fraud, or duress, her rights would be addressed within the proceeding proposed in the Outline.

\textsuperscript{120} Section 39.803 of the \textit{Florida Statutes} provides:

(1) If the identity or location of a parent is unknown and a petition for termination of parental rights is filed, the court shall conduct the following inquiry of the parent who is available, or, if no parent is available, of any relative, caregiver, or legal custodian of the child who is present at the hearing and likely to have the information:

(a) Whether the mother of the child was married at the probable time of conception of the child or at the time of birth of the child.
entity having physical or legal custody of the Child; and e) the GAL.

**Prospective Adoptive Parents not Parties.** The Prospective Adoptive Parent(s) of the Child, notwithstanding that they may be granted temporary physical custody of, or temporary visitation with the Child, shall not be parties to the TPRPA proceeding until, if at all, they are notified by the Court that parental rights have been terminated, the Child is free for adoption, and an adoption petition may be filed. Such notification shall not issue until the

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

(c) Whether the mother has received payments or promises of support with respect to the child or because of her pregnancy from a man who claims to be the father.

(d) Whether the mother has named any man as the father on the birth certificate of the child or in connection with applying for or receiving public assistance.

(e) Whether any man has acknowledged or claimed paternity of the child in a jurisdiction in which the mother resided at the time of or since conception of the child, or in which the child has resided or resides.

(2) The information required in subsection (1) may be supplied to the court or the department in the form of a sworn affidavit by a person having personal knowledge of the facts.


The Florida Rules of Juvenile Procedure provide a form which tracks the statute set forth above. FLA. R. Juv. P. Form 8.969 ("Affidavit of Mother Regarding Unknown Father"). It should be modified for use in situations where the father is known, but the possibility of other prospective fathers is to be negated. See Appendix G infra for a worksheet to assist the practitioner in assuring the completeness of the birth mother's affidavit regarding the identity of the father.

121. The Florida Rules of Juvenile Procedure limits the parties to juvenile proceedings, including proceedings to terminate parental rights, as follows: "Definitions. For the purpose of these rules the terms 'party' and 'parties' shall include the petitioner, the child, the parents of the child, the department, and the guardian ad litem, when appointed." Fla. R. Juv. P. 8.210(a). Though, under this definition, prospective adoptive parents are not parties to termination proceedings under current law, they do enjoy at least "‘participant’" status: "Additional Participants. ‘Participant’ means any person who is not a party but who should receive notice of hearings involving the child. Participants include . . . identified prospective parents . . . Participants may be granted leave by the court to be heard without the necessity of filing a motion to intervene.” Id. at 8.210(b). However, it is arguable that rule 8.210(a), by its very terms, is definition only, and does not circumscribe the entire class of persons who might otherwise become parties, even rule 8.210(b) "participants" who, though they may be granted leave to be heard without the “necessity” of intervenor, nevertheless may choose to move to intervene if they might otherwise establish a legal basis for doing so. Id.
time for filing motions for rehearing or clarification has expired or, if filed, disposed of as set forth in Part X, below.

Notice of Action and Preliminary Hearing. All necessary parties shall be served with a notice ("the Notice") of action and preliminary hearing ("Preliminary Hearing") for TPRPA, issued by the Clerk, with a copy of the Petition attached, at the earliest possible moment following the filing of the Petition, except that if service of process is waived in writing by any necessary party, notice to that party shall be provided by the Petitioner by certified mail/return receipt requested/restricted delivery, and by the Clerk by regular mail, to the address provided by that party in said waiver. Notice shall not be excused except by order of the Court, for good cause shown, upon written waiver by the party for whom excuse of notice is sought.

Service of Process. Service of the Notice shall be in accordance with the Florida Rules of Juvenile Procedure except as otherwise provided herein. Service shall be by personal service if a party is known, located, and residing within this state. Service shall be by constructive service, as provided in chapter 49 of the Florida Statutes, if a party is unknown, not locateable, or located but residing outside this state. The affidavit necessary to support constructive service upon any party shall be in compliance with

122. See Appendix H infra for a form for Notice of Action and Hearing.
123. Using the United States Postal Service's "restricted delivery" certified mail service is advisable for three reasons: 1) the privacy of the addressee is protected by requiring the addressee's signature, not just a recipient's signature, for delivery of the mail; 2) the sender has a written record of actual receipt by the addressee personally, the certified mail receipt being returned to the sender after delivery; and 3) under Senate Bill 550, a court making a determination of abandonment is required to take into consideration "[w]hether other persons prevented the person alleged to have abandoned the child from making the efforts referenced in this subsection [to participate supportively in the birth mother's prenatal care]." See Senate Comm. on the Judiciary, Comm. Substitute for S.B. 550, § 16, 15th Leg. Sess., Reg. Sess. (Fla. 1998) (proposing to create Fla. Stat. § 63.089(4)). Were someone to be found to have intercepted unrestricted certified mail to the father, the father would have legitimate grounds on which to avoid a finding of abandonment under the bill.
124. To further assure that the birth parent signing the surrender is on notice of the anticipated TPRPA action, the surrender, a copy of which should be given to the birth parent, should recite the name, address, and phone number of the court where the TPRPA will be filed.
section 39.803(6) of the *Florida Statutes*. If residing outside this state, a party shall be mailed a copy of the Notice, with a copy of the Petition attached, by certified mail/return receipt requested/restricted delivery by the Petitioner, and by regular mail by the Clerk.

IV. **Response to Notice of Action.** The Mother and/or a Prospective Father of the Child who has been served with or has otherwise received the Notice, who wishes to assert parental rights to the Child, must respond ("Response") to the Notice by the date of the Preliminary Hearing indicated on its face, which date may not be less than thirty days nor more than forty-five days after the last date of personal service upon any necessary party, and/or

---

126. *Florida Statutes* section 39.803(6) (Supp. 1998) provides:
The diligent search required by [these rules] must include, at a minimum, inquiries of all known relatives of the parent or prospective parent, inquiries of all offices of program areas of the department likely to have information about the parent or prospective parent, inquiries of other state and federal agencies likely to have information about the parent or prospective parent, inquiries of appropriate utility and postal providers, and inquiries of appropriate law enforcement agencies.

**FLA. STAT. § 39.803(6) (Supp. 1998).**

These are minimum requirements. Indeed, a better guide to the parameters of an acceptable diligent search are reflected in *Florida Rules of Juvenile Procedure* Form 8.968 ("Affidavit of Diligent Search"). **FLA. R. JUV. P. Form 8.968.**

127. *Florida Statutes* section 49.12 of the *Florida Statutes* provides:
If the residence of any party to be served by publication is stated in the sworn statement with more particularity than the name of the state or country in which the defendant resides, the clerk or the judge shall mail a copy of the notice by United States mail, with postage prepaid, to each defendant within 10 days after making or posting the notice, the date of mailing to be noted on the docket with a copy of the pleading for which the notice was issued.

**FLA. STAT. § 49.12 (1997).**

Service of process by constructive service is not effective where the pleading is not mailed along with the notice. *See* Coin Copies, Inc. v. Financial Fed. Sav. & Loan Ass’n, 472 So. 2d 869 (Fla. 3d Dist. Ct. App. 1985); Tompkins v. Barnett Bank, 478 So. 2d 878 (Fla. 5th Dist. Ct. App. 1985). If a notice mailed by the clerk is not returned, it is presumed that it was delivered as addressed. *See* Lear v. Lear, 95 So. 2d 519 (Fla. 1957). Because the mailing (and nonreturn) of the notice is jurisdictional, an affidavit by the clerk that the notice was mailed and not returned should be considered an important element of proof of service along with the publication affidavit. *See* Appendix I infra setting out a form for "Clerk’s Affidavit of Compliance with Mailing Requirements for Constructive Service of Process."
commencement of publication for constructive service,\textsuperscript{128} and notify the court clearly and unequivocally of her/his desire to seek custody of the Child. To “respond” shall mean to communicate with the Court in a writing filed in the court file before the time of the Preliminary Hearing, or to attend the Preliminary Hearing.

\textbf{Postponement and Re-Notice.} If the date of the Preliminary Hearing must be rescheduled due to failure to timely serve a necessary party, notice of the new hearing date shall be served by mail upon any party previously personally served, at the same address where personal service occurred, or at any other address subsequently provided to Petitioner in writing by that party, without the necessity of further service of process. Any party who waived service of process shall be notified of the new hearing date at the same address to which notice was previously mailed, or at any other address subsequently provided to Petitioner in writing by that party.

\section{V. Termination of Parental Rights at Preliminary Hearing; Actual Abandonment.} If at the Preliminary Hearing the Court: a) finds that all necessary parties have been served with the Notice as set forth in Part III or IV, above; and b) finds that the Court has received no Response from the Mother or any Prospective Father notifying the Court of her/his desire to seek custody of the Child; and c) finds by clear and convincing evidence that: 1) the Mother surrendered the Child for adoption freely and voluntarily by an unrevoked\textsuperscript{129} instrument duly executed for that purpose;\textsuperscript{130} and 2) any and all Prospective Fathers surrendered the Child for adoption freely and voluntarily by an unrevoked instrument duly executed.

\textsuperscript{128} This time frame is different than what chapter 49 provides for constructive service, but is within its due process limitations, and thus a scheme not in conflict with chapter 49. \textit{See} Fla. Stat. ch. 49 (1997 & Supp. 1998).


\textsuperscript{130} See Appendix J \textit{infra} for a sort of self-proving “truth-in-adoption” document developed by this writer to be used as evidence of the “free and voluntary” nature of a birth parent’s surrender.
for that purpose, or executed a denial of paternity of the Child, or actually abandoned the Child, the Court shall enter a judgment ("Judgment") setting forth its specific findings of fact, terminating the Mother's and any and all Prospective Fathers' parental rights to the Child, and freeing the Child for adoption. To "actually abandon" shall mean to abandon a child as defined in section 63.032(14) of the Florida Statutes.

VI. Case Plan; Appointment of Supervising Agency; Evidentiary Hearing. If at the Preliminary Hearing the Court does not terminate parental rights as provided in Part V, above, but finds that the Mother and/or a Prospective Father by a Response has clearly and unequivocally notified the Court at or before the Preliminary Hearing that she/he wishes to seek custody of the Child ("Party Seeking Custody"), the Court shall at the Preliminary Hearing: a) inform any Party Seeking Custody, if present, of her/his right to counsel; b) appoint counsel if any Party Seeking Custody so requests and is indigent; c) direct the Department of Children & Family Services ("the Department") or a Florida licensed child-placing agency ("Licensed Agency"), as supervising agency ("Supervising Agency"), to prepare and file a proposed case plan ("Plan") for the Child within five (5) days of the Preliminary Hearing, to be heard for Court approval within ten days from the date of filing.

131. Senate Bill 550 recognized an "affidavit of nonpaternity" as a substitute for consent by a man identified by a birth mother as the father of her child. See Senate Comm. on the Judiciary, Comm. Substitute for S.B. 550, § 11, 15th Leg. Sess., Reg. Sess. (Fla. 1998) (proposing to amend Fla. Stat. § 63.062 (1997)). The form contents required by this section are inadequate to the form's purpose. First, though titled an "Affidavit of Nonpaternity," the form never actually states that the affiant is not the father of the child. Second, although proposed subsection (4)(a) of the same section requiring the affidavit states that the affidavit "shall not be executed before birth of the minor;" the form provides for recitation, in paragraph 4, that affiant has "not supported the birth mother or her child or unborn child with support of any kind." Most importantly, the form does not require recitation of the child's birth date or gender, thus leaving open the potential for an attempted withdrawal of the affidavit on the basis of mistake or fraud. A better method for allowing a putative father to "sign off" his rights is by a "denial of paternity." Such an instrument is identical to a surrender form, see Appendix D infra, except it states at the outset that 1) the man executing the denial is not the child's father; but 2) even if he is the father, he surrenders the child and waives all rights. See id.


133. See supra notes 30-32 and accompanying text for a discussion of the right to counsel.
(10) days of the Preliminary Hearing; and d) set an evidentiary hearing ("the Evidentiary Hearing") on all then-contested issues, which hearing must be held and completed no less than ten (10) nor more than twenty (20) days from the date of the Preliminary Hearing, unless good cause is shown to shorten or enlarge this time. Neither the Department nor a Licensed Agency shall be disqualified from serving as Supervising Agency for the Plan because it is also the Petitioner.

**Service of Plan; Objections to Plan.** A copy of the proposed Plan shall be served by mail by the Supervising Agency on all parties to the proceeding. If any party objects to the Plan, the Court shall determine at the Evidentiary Hearing whether and in what manner the Plan should be modified.

**Duration of Plan.** The duration of the Plan shall be sixty days from the birth of the Child, or the date of the filing of the Plan, whichever is later, or a lesser or greater period if agreed to by the parties and approved by the Court. The Plan shall be appropriate to the needs of the Child, with the goal of assisting the Court in determining what disposition to make of the Petition, among the alternatives set forth in Part IX, below. Requirements for the Plan are set forth in Part VII, below.

**Termination of Parental Rights at Evidentiary Hearing.** Should the Court determine at the Evidentiary Hearing that the Mother and any and all Prospective Fathers of the Child are estopped to assert parental rights because they have executed surrenders of the Child voluntarily, without fraud or duress, which surrenders have not been revoked as may be provided by law, or that the Mother has surrendered the Child as aforesaid or actually abandoned the Child, and any and all Prospective Fathers have executed denials of paternity, or actually abandoned the Child prior to filing a Response to the Notice, the Court shall enter a judgment ("Judgment"): a) based upon written findings of clear and convincing evidence, terminating all parental rights to the Child; b) terminating the Plan; and c) freeing the Child for adoption.

**Continuation of Plan When Rights Not Terminated at Evidentiary Hearing — Child Under 180 Days of Age.** If parental rights are not terminated at the Evidentiary Hearing, the Court shall enter its order a) setting forth all contested issues and
the Court's findings of fact thereon and, if the Child was less than 180 days of age at the time of the filing of the Petition, b) providing that the Plan shall remain in effect pending the Disposition Hearing provided for in Part IX, below.

**Child 180 Days Old or Older.** If parental rights are not terminated at the Evidentiary Hearing and the Child was 180 or more days of age at the time of the filing of the Petition, the Court shall: a) on proper motion and payment of any applicable filing fee, enter its order allowing the filing of a custody action under chapter 61 of the *Florida Statutes*, a dependency action under chapter 39 of the *Florida Statutes*, or a paternity action under chapter 742 of the *Florida Statutes*, within a time certain, not to exceed ten (10) days from the date of the order, in the same proceeding, and b) enter its order determining temporary custody of the child. If no such action is filed within 10 days, the Court shall proceed as set forth in the preceding paragraph without regard to the Child's age.

**VII. Case Plan Requirements**

**A. Plan Contents.** The Plan shall provide for:

1. The expiration date of the Plan;

2. Identification of Plan participants (i.e., the parties and the Prospective Adoptive Parents), the Supervising Agency and agency personnel responsible for the Plan, and outside resources/personnel (including any out-of-state agencies) to be utilized to promote the requirements of the Plan (including names, addresses, telephone numbers, and other pertinent data);

3. care and maintenance of the Child pending disposition of the proceeding, including room and board, provision for the medical, emotional, and social needs of the Child and, if applicable, the educational, religious, and cultural needs of the Child (physical custody of the Child to be with foster parents, unless the GAL requests, the Supervising Agency recommends in the Plan, and the Court orders, that physical custody be with the Prospective Adoptive Parents, and they are agreeable to the arrangement);
4. supervised visitation by non-custodial Plan participants (the Prospective Adoptive Parents, if not physical custodians of the Child under the Plan, having no visitation with the Child unless the GAL requests, the Supervising Agency recommends in the Plan, and the Court orders, that they may visit with the Child, and they are agreeable to the arrangement);

5. modification of the Plan should the needs of the Child change during the pendency of the Petition (including, but not limited to, circumstances resulting in the need for a change of physical custodian of the Child or a change in any visitation schedule);

6. extension of the expiration date of the Plan if necessitated by a motion for rehearing or clarification, or by resort to a higher court;\textsuperscript{134}

7. paternity testing for any Party seeking custody who claims to be the biological father ("the Father") of the Child;

8. counseling support for Plan participants pending final disposition of the Petition;

9. a written psycho-social assessment of any Party seeking custody of the Child including the Party’s strengths, resources, desire and readiness to parent;\textsuperscript{135}

10. parenting education for any Party seeking custody of the Child; and

11. weekly assessment by the Supervising Agency as to the Plan’s progress and the Child’s well-being, based on contact with the Plan participants and review of any evaluations made by third parties as required by the Plan;

B. \textit{Obligations of Parties Seeking Custody.} Any Party seeking custody of the Child shall submit to interviews and testing as required by the Plan and shall provide upon the request of the Supervising Agency:

\textsuperscript{134} \textit{See infra} Parts X, XII.

\textsuperscript{135} \textit{See infra} note 136.
1. his or her full legal name, maiden name if applicable, aliases if applicable, birth date, birth place, and social security number, as well as the same information for all persons residing in, or anticipated to reside in, the Party’s household should Custody of the Child be awarded to him or her;

2. information as to his or her employment history, places and dates of residency, marital history, and familial relationships;

3. a financial affidavit;

4. a blanket authorization for release of information by any source having knowledge of the matters set forth in subsection (c), below, and/or of matters arising from the planning, testing, visitation, education, or any other service or evaluation otherwise contemplated by the Plan; and

5. biologic material necessary for paternity testing at a time and place, and in a manner, specified by the laboratory conducting the testing.

Continuing Duties of Parties Seeking Custody. A Party seeking custody of the Child shall have a continuing duty to keep the Supervising Agency apprised of any changes in the information required to be provided under this subsection (B), to cooperate with the Supervising Agency and its agents, and to facilitate implementation of the Plan.

C. Psycho-Social Assessment. The written psycho-social assessment, referred to in subsection (A)(9), above, as to any Party seeking custody of the Child, shall be prepared by a licensed mental health professional trained and experienced in risk assessment and shall include data and impressions regarding:

1. the Party’s social situation, medical health, mental health, employment, and criminal history, including exposure to or perpetration of child abuse, domestic violence, and/or substance abuse;

2. the Party’s current employment, income, other financial resources, housing (a home visit is required), and plan for

136. See supra note 99.
child care should Custody of the Child be awarded to him or her;

3. the Party's potential for successful parenting as may be determined by current psychological and/or psychiatric and/or substance abuse and/or domestic violence evaluation(s), parenting education outcomes, and performance as to other of the Party's children, if any; and

4. state and local criminal background checks and child abuse registry checks for the Party and all persons residing in, or anticipated to reside in the Party's household, should Custody of the Child be awarded to him or her.

D. Parenting Education. Parenting education shall be provided to any Party seeking custody of the Child, including information to allow the Party:

1. to identify various stages of child development;
2. to understand the emotional, nutritional, and intellectual stimulation requirements of the Child;
3. to appreciate the principles of child safety;
4. to recognize alternatives to physical punishment to accomplish child discipline;
5. to access medical and social services available to the Child and the Parent; and
6. to understand and seek out resources for any existing special medical and/or educational needs of the Child.

E. Copies of Plan to be Provided. A copy of the Plan shall be provided to all Plan participants, except that information identifying the Plan participants shall be redacted from the copies to preserve the Plan participants' privacy.

VIII. Case Plan Status Report. Ten (10) days prior to expiration of the Plan, the Supervising Agency shall file with the Court a status report detailing the results of the Plan. A copy of the status report shall be served by mail by the Supervising Agency upon all parties to the termination proceeding.
IX. Disposition Hearing. No later than the date of expiration of the Plan, the Court shall hold a hearing ("Disposition Hearing") to determine the final disposition of the Petition, and shall enter its judgment ("Judgment") setting forth such disposition within five days of the Disposition Hearing. The Court shall take into consideration the report of the Supervising Agency, the recommendation of the GAL, and the presentations and arguments of any other party, and shall dispose of the Petition, based upon written findings, in one of the following ways:

A. Termination of Parental Rights; "Constructive Abandonment." If supported by clear and convincing evidence, confirm the Mother's and/or the Father's surrender or denial of paternity, or find the Mother and/or Father to have actually or constructively abandoned the Child, and terminate the Mother's and Father's parental rights, freeing the Child for adoption. 137 To "constructively abandon" a child means to evince unwillingness and/or gross inability, as demonstrated by the outcome of a child's case plan, to assume care, custody, and control of a child for the purpose of providing a child a safe and stable family life.

- OR -

B. No Termination of Parental Rights. If supported by clear and convincing evidence of revocation, fraud, or duress as to the surrender of either of them, void both the Mother's surrender and the Father's surrender, if any, rendering the surrenders and the fact of their execution nullities for all purposes, and, depending upon the Court’s findings as to the best interests of the Child:

1. Shared Parental Responsibility. The Court shall award shared parental responsibility for the Child to the Mother and the Father, determining primary residential custody of the Child, awarding liberal visitation to the non-residential Parent, and reserving jurisdiction to award child support upon proper motion; or

2. Sole Custody to Mother. The Court shall award sole Custody of the Child to the Mother, with or without visitation

---

137. Actual abandonment may be found at the Disposition Hearing notwithstanding a previous finding of no actual abandonment if the court finds clear and convincing evidence of actual abandonment at the time of the Disposition Hearing.
by the Father, reserving jurisdiction to award child support upon proper motion; or

3. **Sole Custody to Father.** The Court shall award sole Custody of the Child to the Father, with or without visitation by the Mother, reserving jurisdiction to award child support upon proper motion.

**Continuing Jurisdiction.** Should the Court dispose of the Petition pursuant to this subsection (B), the Court shall retain jurisdiction over the Child as in a child custody proceeding under chapter 61 of the *Florida Statutes*.

**Change in Physical Custody Following Trial Court’s Order.** If physical custody of the Child is to change as a result of the Court’s Judgment under this Part IX, the Judgment shall set forth with specificity the time, manner, and conditions for transfer of custody, which shall occur no less than five (5) calendar days from the date the Court’s order becomes final, as set forth in Part X, below.

**X. Judgment; Motions for Clarification and/or Rehearing; Finality of Judgment.** Any Party to the TPRPA proceeding may file a motion for clarification or a motion for rehearing of the Judgment disposing of the Petition under Part IX, above, within seven (7) days of the date of the Judgment, with a courtesy copy of said motion, to be delivered by the moving party on the day of filing, to the judge who entered the Judgment or, in his or her absence, to the chief judge of the Court. If no such motion is filed, the Judgment shall be final.

**Disposition of Motions.** If a motion for clarification or a motion for rehearing is filed, the judge who entered the Judgment or, in his or her absence, a judge designated by the chief judge of the Court, shall consider the motion and, within five (5) days of the filing of the motion, enter an order either denying the motion or requiring response to the motion by the non-moving party or parties. If required, the response(s) shall be filed within five (5) days of the date of the order, with a courtesy copy delivered as set forth above. Any reply shall be filed within five (5) days of service of the last response, also with a courtesy copy delivered as above. An order disposing of all outstanding motions shall be
entered no later than ten (10) days after the filing of the last permissible reply or response, whereupon the Judgment shall be final as modified, if at all, by the order.

XI. **Filing Petition for Adoption.** A petition for adoption of the Child shall be filed, if at all, only after the entry of a Judgment that is final as set forth in Part X, above. The adoption petition shall be filed within the TPRPA proceeding, accompanied by payment of the appropriate filing fee for adoption cases in that circuit.

XII. **Appeal.** Any party to the TPRPA proceeding may file an appeal from the Judgment disposing of the Petition. Appeal shall be to the district court of appeal and shall be expedited pursuant to the rules of court relating to child welfare cases. Notice of appeal shall be filed within five (5) days of the date of the Judgment of the circuit court becomes final.

*En Banc Review.* The district court shall consider *en banc* whether the trial court’s disposition of the Petition was, a) supported by clear and convincing evidence and b) in the Child’s best interests without regard to the Child’s prospective adoption.

*Motions for Rehearing Prohibited.* No motion for rehearing of the district court’s decision shall be filed. Motions for clarification are permitted, but may be stricken on the court’s own motion if found to be primarily in the nature of a motion for rehearing.

*Change in Physical Custody following District Court Decision.* If the district court’s decision requires a change in physical custody of the Child, the court’s order shall set forth with specificity the time, manner, and conditions for transfer of custody, which shall occur no less than five (5) calendar days from the date the court’s decision becomes final after disposition of motions for clarification, if any.

XIII. **Early Termination of Case Plan and Disposition.** A court may at any time, on motion of any party to the TPRPA proceeding or on its own motion, terminate the Plan and make final disposition of
the Petition as otherwise provided herein if such is found to be in the best interests of the Child.\textsuperscript{138}

XIV. \textbf{Repose.} No action or proceeding of any kind, by any person, to vacate, set aside, or otherwise nullify a final order of termination of parental rights pending adoption on any grounds may be filed after 180 days from entry of a final judgment of adoption of the Child.

VI. CONCLUSION

Statutes and court cases notwithstanding, adoption is not primarily a legal event. When legal mechanisms fail in contested adoption cases, it is because they are not forged in patient understanding of the non-legal circumstances, motivations, needs, and goals of everyone involved in a prospective adoption.\textsuperscript{139} Because the primary imperative of the law is to join the issues and render a decision, and because emotionally-charged matters are at stake, the early circumspection necessary in these cases, which can be accomplished through experienced social work, is not always practiced. Though “wait, watch, and listen” is not in the general legal lexicon, such an approach, properly managed, is precisely what will protect children’s best interests, in both the short term and the long term. At the same time, this approach will also protect the kinship rights of the children’s biological parents, as well as the rightful expectations of prospective adoptive parents.

The essential shortcoming of Senate Bill 550, as it relates to unwed birth fathers’ rights, was its naive refusal to distinguish between fathers who

\textsuperscript{138} Those circumstances might include, but would not be limited to, a settlement among the plan participants, the development of evidence that the prospective father is not the biological father of the child, or abandonment of the case plan by the birth parent(s).

\textsuperscript{139} In adoption circles, the primary parties to an adoption are referred to as “the triad,” meaning the birth parents, the adoptive parents and the adoptee. \textit{See generally} ELINOR B. ROSENBERG, \textit{THE ADOPTION LIFE CYCLE} (1992). However, it is important to recognize that because adoption, like procreation itself, is an issue which touches the very core of our lives, there are many other “participants” in an adoption whose thoughts and feelings about adoption may have significant impact on the process. These may include triad members’ friends, family, physicians, religious advisors, and teachers, to name a few, and, indeed, adoption social workers and lawyers. Perhaps in recognition of the expansive nature of the adoption “interest group,” the Evan B. Donaldson Institute uses the term “adoption constellation” to refer collectively to “birth parents, adoptive parents, adopted children and adults, and the professionals who serve them.” \textit{EVAN B. DONALDSON ADOPTION INST., ANN. REP., AUG. 1996-JUNE 1997.}
wish merely to assert parental rights and those who demonstrate commitment and ability to undertake responsibility for parenting their children. An unwed father’s bare objection to the adoption of a child, presented with no substantial intention and fitness to raise the child himself, should not determine the child’s fate.
FORM FOR PROSPECTIVE ADOPTIVE PARENTS’ ACKNOWLEDGEMENT
OF LEGAL RISK PLACEMENT (AGENCY)

ACKNOWLEDGEMENT AND AGREEMENT RE: LEGAL RISK PLACEMENT

Prospective Adoptive Parent(s): ____________________________________________

Child’s Adoptive Name: ___________________________________________________

Date of Birth: _____________ Date of Placement: ______________

THIS IS A "LEGAL RISK PLACEMENT." PARENTAL RIGHTS HAVE NOT YET BEEN TERMINATED.

The birth mother of the child being placed in your home for the purpose of adoption executed a written
surrender as provided by law/has stated she will execute a written surrender as provided by law on or about
_________________________. Under Florida law, such a surrender is irrevocable absent a showing of fraud or duress in the surrender process. Nevertheless, the law requires that a judicial termination of the parental rights of both the birth mother and the birth father occur. Papers initiating this proceeding will be filed by the Agency's attorney. (Note: The termination proceeding is separate and apart from, and precedes the filing of, an adoption proceeding on behalf of the prospective adoptive parents.)

The birth father's parental rights are expected to be addressed within the termination proceeding as follows:

________________________________________________________________________

________________________________________________________________________

Depending upon the complexity of matters relating to the birth father’s rights as described above, thetermination of parental rights process may involve one (1) to six (6) months. You will be notified in writing of the court’s decision. In the event the Agency is unable to obtain judicial termination of parental rights, the Agency may require return of the child to the Agency's physical custody with or without a court order. By execution of this Acknowledgement and Agreement re: Legal Risk Placement, you agree to relinquish physical custody of the child to the Agency if so required.

Date ___________________________ Prospective Adoptive Parent

Date ___________________________ Prospective Adoptive Parent

Date ___________________________ Agency Representative
APPENDIX B

FLORIDA BAR GRIEVANCE COMMITTEE LETTER EXONERATING INTERMEDIARY CHARLOTTE DANCIU OF PROFESSIONAL MISCONDUCT IN BABY EMILY

THE FLORIDA BAR

* * *

May 3, 1995

* * *

RE: Complaint of Gary Bjorkland against Charlotte Danciu, Esquire

* * *

Fifteenth Judicial Circuit Grievance Committee "F" has devoted considerable time at several of its meetings to an extensive consideration of the remarks of the Fourth District Court of Appeals [sic] in the Baby Emily adoption case and Mr. Bjorkland's grievance. It has, by unanimous vote, made a determination of no probable cause for findings of violation . . . .

In its review, the committee found that the portion of the court's decision entitled "Conduct of the Attorney/Intermediary" appeared to contain many inaccuracies. As an example, the court makes reference to an August 12, 1992, hearing on the adoptive parents' "motion to waive the biological father's consent to adoption*. In fact, the motion that was noticed for August 10, 1992, specifically states that the purpose of the hearing was to hear objections. The court further observes:

There is no evidence in the record, nor have we been apprised of any evidence, to indicate that the biological father deliberately avoided service of the notice of this hearing by a duly appointed process server.

It was obvious to the committee that the court simply did not have, as part of the record before it, the transcript of the August 10, 1992, hearing. In fact, the court notes that the adoptive parents brought to its attention the notice of hearing which it observed was not part of the record.

Further, the court noted that Ms. Danciu did not inform the trial court of the July, 1992, conversation with Mr. Bjorkland. That is not accurate. Ms. Danciu informed Judge Vonhof of her telephone conversation with Mr. Bjorkland. It appeared very clear to the committee that it was as a result of that conversation that Ms. Danciu determined to attempt to address Mr. Bjorkland's position as related to her in that call, by scheduling a pre-birth hearing for the purpose of hearing "your [Mr. Bjorkland's] objections".

The committee examined the testimony of the proposed adoptive father regarding when he learned of Mr. Bjorkland's objections. It appeared very clear to the committee that the proposed adoptive father's testimony related to Mr. Bjorkland's post birth actions and did not purport to address when the proposed adoptive parents first learned that Mr. Bjorkland was objecting. The proposed adoptive parents have confirmed that they were aware of Mr. Bjorkland's objections soon after Ms. Danciu's July, 1992, conversation with Mr. Bjorkland.

While the court seemed to criticize the procedure employed by Ms. Danciu, viz., a pre-birth hearing for the purposes of addressing a father's objections, the committee found no ethical impropriety in Ms. Danciu's attempt to proceed in that fashion. In fact, there appeared to the committee a rather considerable
appeal to the concept of addressing all potential impediments to an adoption, pre-birth.

The committee very carefully read and re-read the colloquy between Ms. Danciu and Judge Vonhof at the August 10, 1992, hearing. While there is no question but that Ms. Danciu stated: "There is no objection at all...", the committee concluded that when read in context of the events that preceded the hearing and occurred at the hearing, the referenced remark was made in the context of filed objections. It appeared obvious to the committee that there was no purpose for the hearing other than to address the natural father's objections. The notice of hearing specifically so stated. Most persuasive to the committee however, were the remarks of Judge Vonhof, who . . . reviewed the transcript of the August 10, 1992, hearing and advised that "I can only say, once again, that I do not feel that I was in any way lead astray by any comments, or lack of same, by Ms. Danciu." His honor had previously, unsolicited, informed that [sic] committee that * . . . I truly believe that the record that the Fourth District Court of Appeals [sic] reviewed could not have been complete or they would not have made the remarks that they did as to Ms. Danciu's conduct.*

Very truly yours,

/ls/

DAVID M. BARNOVITZ
Branch Staff Counsel

* * *
APPENDIX C

FLORIDA DEPARTMENT OF CHILDREN & FAMILY SERVICES' FORM
FOR CONSENT TO ADOPTION FOR USE BY ADOPTION INTERMEDIARIES

In The Circuit Court Of The Judicial Circuit
Of Florida, By And For The County Of ___________________________

Case No.

In The Matter Of The Adoption of ____________________________

CONSENT FOR ADOPTION

STATE OF FLORIDA
COUNTY OF ____________________________

Before me this day personally appeared ____________________________, who, being duly sworn, deposes and says:

I, the undersigned ____________________________, sex ____________________________, first born the day of ____________________________, 19__________________________, do hereby agree to relinquish all rights to and custody of the child to a person or persons unknown to me and do further consent to adoption by said person or persons if a Court of competent jurisdiction should approve. The names of the person or persons to whom this Consent is given are known to ____________________________, Intermediary. I hereby waive notice of any proceedings for this adoption.

That this Consent is executed voluntarily and is done so by the undersigned without requiring the identification of the adopting parent or parents.

That the biological, sociological and medical history information regarding the above named child and the natural parents, as required by the Department of Health and Rehabilitative Services pursuant to Section 63.082(3)(a), Florida Statutes, is contained in HRS-CYF Form 5108, BACKGROUND INFORMATION ON PROSPECTIVE ADOPTIVE CHILD, and HRS-CYF Form 5074, FAMILY, SOCIAL AND MEDICAL INFORMATION OF CHILD TO BE ADOPTED.

Signed, sealed and delivered in the presence of:

__________________________

STATE OF FLORIDA
COUNTY OF ____________________________

I HEREBY CERTIFY that on this day before me, an officer duly authorized in the state aforesaid and in the county aforesaid to take acknowledgements, personally appeared ____________________________, known to me to be the person described in and who executed the foregoing Consent for Adoption and acknowledged before me that ____________________________, executed the same.

WITNESS my hand and official seal in the county and state aforesaid this _______ day of _____________, 19_________.

__________________________

(Notarial Seal)

Notary Public, State of Florida at Large
My Commission Expires: ____________________________

HRSCyF Form 5110, Jan 65 (Obsoleses HRD-SES Form 4028 which may not be used)
(Stack Number: 5740-000-5110-7)

Published by NSUWorks, 1998
APPENDIX D

FORM FOR SURRENDER OF CHILD FOR ADOPTION
TO A FLORIDA LICENSED CHILD-PLACING AGENCY

IN THE CIRCUIT COURT OF THE ________ JUDICIAL CIRCUIT
IN AND FOR ________ COUNTY, FLORIDA

In the Interest of: JUVENILE DIVISION
__________________________ CASE NO.: __________________
a Child.
__________________________

SURRENDER AND CONSENT FOR ADOPTION
WITH WAIVER OF NOTICE, SERVICE OF PROCESS, AND RIGHT TO COUNSEL

1. ______________________, of ____________________________, telephone ______________,
age ___, the Birth Parent of ________________________, a ______ child, born to ______________________
on ______________________, at ______________________ Hospital, ______________ County, Florida,
desiring to release my said child for the purpose of adoption as provided by law, hereby freely and
voluntarily:

1. SURRENDER my child to ________________________ ('the Agency'), a Florida
licensed child-placing agency willing to receive my child for the purpose of placement for
adoption, or its designate.

2. WAIVE NOTICE, SERVICE OF PROCESS AND ANY RIGHT TO COUNSEL as to any and
all hearings and proceedings legally necessary for the termination of my parental rights,
commitment of my child to the custody and guardianship of said Agency or any designate
of the Agency, and for subsequent adoption proceedings.

3. CONSENT IRREVOCABLY, UNCONDITIONALLY, AND FINALLY TO:

(a) the permanent loss, deprivation and forfeiture of my parental rights to my child
as now exist or heretofore existed;

(b) the entry of a court order terminating my parental rights, committing my child to
the custody and guardianship of the Agency or its designate for subsequent
adoption and/or any other court orders sought with the consent of the Agency,
believing such termination of my parental rights to be in the manifest best
interests of my Child;

(c) the placement of my child by the Agency or its designate in a family home,
which may or may not be known to me, for prospective subsequent adoption; and

Page 1 of 2 Initials _____
SURRENDER AND CONSENT FOR ADOPTION WITH WAIVER OF NOTICE, SERVICE OF PROCESS AND RIGHT TO COUNSEL

(d) the appearance by the Agency or its designate as a party in any court where the legal adoption of my child is pending, to make all necessary consents to such adoption.

4. WAIVE ALL RIGHT to knowledge at any time hereafter of the whereabouts of my child, or the identity or location of any custodian or adoptive parent of my child, or to have any court compel the Agency, or anyone in its stead, to divulge any such information.

5. ACKNOWLEDGE that I have been offered the opportunity of receiving independent legal advice at no charge to me before signing this legal document and have either received such advice or have declined it.

BIRTH PARENT'S SIGNATURE: X

PRINT NAME: ____________________________

DATE: ____________________________

SIGNED IN THE PRESENCE OF:

X ____________________________
as witness to the voluntary nature of the Birth Parent's acts and waivers herein

Print Name: ____________________________  SS#: __________
Home Add.: ____________________________
Bus. Add.: ____________________________

X ____________________________
as witness to the voluntary nature of the Birth Parent's acts and waivers herein

Print Name: ____________________________  SS#: __________
Home Add.: ____________________________
Bus. Add.: ____________________________

STATE OF FLORIDA
COUNTY OF __________

BEFORE ME, an officer authorized to take acknowledgments, appeared__________, who produced as identification__________, and acknowledged that I/he did execute the foregoing Surrender and Consent for Adoption, Waiver of Notice, Service of Process and Right to Counsel, freely, voluntarily and for the purposes stated therein at ______ AM. PM. on this day.

WITNESS MY HAND AND SEAL in the county and state last aforesaid this ______ day of ____________, 19 ______.

NOTARIAL SEAL

Notary Public

Page 2 of 2  Initials ___
APPENDIX E

ANALYSIS OF VARIOUS CHANGES TO FLORIDA'S ADOPTION STATUTE
AS PROPOSED IN THE FLORIDA SENATE JUDICIARY COMMITTEE'S
COMMITTEE SUBSTITUTE FOR SENATE BILL 550
(FLORIDA LEGISLATURE 1998)

Prepared by Hausmann & Hickman, P. A.
Attorneys at Law
Boynton Beach, Florida

1. Proposed Section 39.464: Child's Right to Petition for Termination of Parental Rights

The proposed bill's impact on Chapter 39 of the Florida Statutes (Juvenile Court Statutes) has the apparent intent of removing agency adoptions from Chapter 39 proceedings and placing agency adoptions within Chapter 63 proceedings. However, the additional language proposed for section 39.464 limits the class of individuals who have standing to file a Chapter 39 Termination of Parental Rights Petition from "any person" to the Department, the GAL and "any person related to the child." In practice, this proposed language would limit the child's ability to obtain independent counsel and petition for termination. In the landmark case, In the Interest of Gregory K, the Florida Supreme Court stated that a child could petition for termination of parental rights provided he petitions through a next friend. Traditionally, children file such petitions through professional attorneys who appear in a case as their next friend and attorney ad litem. Most often, such professionals are not related to the child.

2. Proposed Section 63.03: Birth Parent Fraud

Adds a provision within the Adoption Statute which states that any person who accepts benefits related to the same pregnancy from more than one adoption entity commits a second degree misdemeanor, and that any person who knowingly provides false information shall be subject to civil repayment penalties. This is an excellent provision designed to protect adoptive parents from fraud and misrepresentation.

3. Proposed Section 63.039: Liability of Attorneys and Adoption Entities

This proposed section places upon an attorney duties and liabilities outside of the obligations currently imposed by the Florida Bar and potentially holds attorneys liable for malpractice outside of liability insurance and a separate malpractice action.

Subsection (1) is a superfluous and redundant provision which essentially states that each adoption entity shall comply with the law. This subsection requires extensive and repetitive disclosures and repetitive acknowledgment of receipt of disclosure. While written disclosure is important and customarily provided, the provisions of this subsection are onerous and, when read in conjunction with the remaining subsections, are apparently designed to encourage litigation and sanctions against attorneys.

Subsection (2) holds an attorney absolutely liable for any document error. The document provisions of section (1) are so numerous, extensive and redundant that errors, which will not materially affect the child's placement, are likely to occur. These provisions will result in an increase in malpractice insurance premiums, and many errors may not be covered by current malpractice policies. Accordingly, many reputable attorneys may withdraw from adoption practice. Additionally, the small family practitioner preparing a stepparent adoption is also exposed to these extreme liability standards. No other Florida statute holds attorneys strictly liable.

Subsection (3) proposes to hold attorneys liable outside of any malpractice proceeding when a consent is set aside for fraud or duress. Like subsection (2), this provision would render adoption attorneys uninsurable or insurable at high rates. Such an award would most likely not be covered by current malpractice policies. In order to assert any right to insurance coverage in the event of a negative ruling, the attorneys must place their malpractice insurer on notice.

https://nsuworks.nova.edu/nlr/vol23/iss1/7
of any adoption challenge and allow the insurer to participate in the defense of that challenge. Such an action would violate the privacy and confidentiality provisions of an adoption proceeding.

Subsection (4) holds attorneys and adoptive parents absolutely liable for attorneys' fees and costs of a birth parent who successfully challenges an adoption. No other family law statute holds litigants strictly liable regardless of ability to pay fees and costs. No Florida statute holds attorneys strictly liable. The concerns regarding insurability and integrity within the practice also apply to this subsection.

This section creates liability and malpractice actions within the adoption statute, eliminating privity of contract requirements and the right to a jury trial.

4. Proposed Section 63.052(2) and (3): Foster Care Placements

This section mandates that a child be placed in licensed foster care when an adoptive home is not identified at the time the child is discharged from a medical facility. This would prohibit adoption entities from taking a child into private care, thereby substantially raising the initial costs of such adoptions to adoptive parents, and potentially to the State of Florida, and causing unnecessary complications and delays. A child cannot be placed in State sponsored foster care unless a Court finds that the child has been abandoned, abused or neglected, adjudicates the child dependent and provides for a reunification case plan or adoption case plan. Privately licensed foster care is expensive. Moreover, some birth parents were raised in foster care and specifically choose private adoption for their children to avoid the foster care system. This provision would eliminate a choice for these birth parents.

Proposed Section 63.082 (4) also encourages parents to place their children in foster care. This is an extremely expensive and detrimental provision. Foster care costs are already a large burden upon the State budget and children's advocates are always seeking new funds to improve our currently overburdened foster care system where children are frequently abused and neglected. Moreover, the parental rights of a child placed in foster care cannot be terminated for twelve months. Thus, the location of a permanent home for a child is substantially delayed.

5. Proposed Section 63.062(1)(d)(3): Birth Father Consents

This section requires notice to any man who the birth mother has reason to believe may be the birth father, regardless of whether the man provided financial or emotional support to the birth mother, or assisted her in obtaining medical care. This requirement places an undue burden on birth mothers and adoptive parents and will substantially increase the risk of frivolous, time consuming and expensive litigation, thus raising the costs of an adoption and rendering some adoptions unstable (e.g., if a birth mother lists 12 potential fathers, the adoptive parents must pay expensive investigative and legal costs to search, notify, and obtain consent from each possible father). Any man who had relations with the birth mother around the time of conception could unnecessarily delay or block an adoption, thus prohibiting the birth mother from making decisions in the best interest of her child. This provision could potentially encourage a birth mother to lie about the identity of a potential father after her consent to an adoption is irrevocable, thus providing her an additional avenue to challenge an adoption and disrupt the placement and stability of a child. Unstable and lengthy adoptions do not serve the interests of a child. Currently, the law sets forth a clearly defined class of fathers whose consent is required, i.e. a man married to the mother, a man who has filed with the office of vital statistics and a man who has filed a paternity action. Under the current law, attorneys and adoptive parents may search public records to determine whether a father's consent is necessary for an adoption. As proposed, this stability would be removed from the statute.

6. Proposed Section 63.052(2): Non Paternity Affidavits

This provision allows adoption entities to obtain an affidavit of nonpaternity from any named father prior to the birth of the child. The proposed modification reasonably fills a hole in the current statute and encourages stable and safe adoptions by allowing the adoption entity to advise the adoptive parents, prior to taking the child into their home, of the status and stability of their adoption.

However, proposed section 63.052(4)(a) directly conflicts with this provision as it states that an affidavit of non-paternity may not be executed until after the birth of the child. Many potential birth fathers who deny paternity are difficult to locate and frequently move. Thus, it may take many weeks or even after the placement of the child in the
adoptive home to locate these men to obtain their non-paternity affidavits which may potentially cause uncertain and unstable adoptions. Many of these men have not supported the birth mother and would otherwise have no legal right to object to an adoption.

7. Proposed Section 63.082(3)(a): Social Worker Interviews of Birth Parents

This provision requiring a social worker interview with a birth parent prior to execution of a consent for adoption conforms with current standards of practice and assures that all precautions are taken to obtain a valid consent for adoption.

8. Proposed Section 63.082(4): Language and Form of Consents

This subsection also requires that all adoption consents contain the following language:

You have the right to:

(A) Consult with and attorney;

(B) Hold, care for, and feed the child;

(C) Place the child in foster care or with any friend or family member you choose who is willing to care for your child;

(D) Take the child home;

(E) Find out about the community resources that are available to you if you do not go through with the abortion.

(This is typed in 16 point bold face).

(Additional language is omitted).

The above language incorporated into a consent would only insult and traumatize a birth parent signing a consent to adoption. Birth parents who voluntarily sign a consent for adoption do so after much thought and contemplation. The staff and social workers at the hospital and the social worker who interviews the birth parent discuss these rights in a private, dignified and personal manner prior to the time that a consent for adoption is presented to the birth parent for signature. Many hospitals require a similar form which is not in which assumes that a birth parent is not intelligent and cannot read normal type.

9. Proposed Section 63.082(4) and (7): Three (3) Day Revocation Period

This subsection allows a three (3) day revocation period which would only serve to promote unstable placements and exploit the emotions of the adoptive parents. The majority of birth mothers are offered or receive counseling prior to executing a consent for adoption and all birth mothers speak with a social worker and other professionals prior to executing a consent for adoption. A birth mother may take as much time as she needs after the birth of her baby before she signs any consent for adoption.
The recision period would place an adoptive child's home placement at risk, causing the child to be removed from the original home many days after placement. For example, a birth parent who signs a consent on a Friday may withdraw their consent by mail the following Tuesday. Such notification may not be received by the adoption entity some 2 to 5 days after mailing.

Furthermore, many birth parents favor laws which provide that consents are final upon signing as those laws allow them to proceed forward without the emotional burden of having additional days to continuously rethink their decision.


This section requires that the adoption entity provide a copy of each signed consent to each person whose consent is required and the adoption entity must obtain written verification that said copies were received. This provision violates the confidentiality provisions of the statute and would unnecessarily increase the costs incurred by adoptive parents.

11. Proposed Section 63.085(1): Statute of Repose and Appellate Period

Subsection 63.085(1)(9) correctly advises birth parents that any action or proceeding to vacate an adoption must be filed within one year of the final judgment because section 63.182 contains a statute of repose which protects adoption orders from any challenge one year after entry of the final judgment of adoption.

However, subsection 63.085(1)(9) advises the birth parents that they have one year after entry of a final judgment of adoption to appeal any irregularities in the adoption proceeding. While the statute does not technically extend the appellate period, this misleading disclosure read in conjunction with subsections 63.085(1)(10) and 63.089(6)(c) would effectively extend the appeal period from thirty (30) days to one year. Subsection 63.085(1)(10) allows a birth parent to set aside an order terminating rights when their failure to timely assert their rights was the result of misrepresentation and subsection 63.089(6)(c) renders all orders terminating parental rights voidable when a birth parents' failure to act is the result of false information. Subsection 63.085(1)(9) provides this misrepresentation which would allow extension of the appellate period. Currently, all court order are subject to a 30 day appeal period a one year appeal period would only serve to create unstable adoptions.

Pursuant to proposed section 63.142(4) a court is not authorized to enter a judgement for adoption until the applicable appellate period has expired. As the language of this statute may potentially extend the appellate period to one year, this would potentially delay finalization of adoption until the child is approximately eighteen (18) months old. The mandatory disclosure laws advises a birth parent that they have one year to appeal an order terminating parental rights, thereby postponing a final judgment until more than one year post-birth. This is inconsistent with prior sections, which allow finalization within approximately 90-120 days post-birth. This could potentially delay the stability of an adoption by two years thus, placing a child at risk of removal from an adoptive home at the age of two. Such a scenario is detrimental to a child.

12. Proposed Section 63.087(4): Venue

This section requires that all adoption proceedings be filed in the venue where the birth parents reside, thus eliminating the privacy provision which allowed adoptive parents to file their adoption proceeding in the venue where their chosen adoptive entity exists if such choice protected the privacy of the adoptive parents. The privacy provision has served to protect one of the primary and essential elements of an adoption - the identity and location of the adoptive parents. The large majority of adoptions are uncontested. Only an extremely small number are challenged each year. This provision would require that adoptive parents incur the additional expenses of filing outside the venue in every uncontested case. The current law protects birth parents as a common law challenge to venue would allow the birth parents to keep venue in their place of residence.

13. Proposed Section 63.087(6): Termination of Parental Rights Separate from Adoption Proceeding
This procedure is contrary to current law that provides that the birth parent’s rights are not terminated until the rights of the adoptive parents are vested. This proceeding would effectively render a child without a legal parent for an extensive period, thus raising concerns on the ability to authorize medical treatment, etc. Leaving a child without a legal parent is contrary to the child’s best interests. The juvenile court system is currently experiencing many problems caused by children who do not have a legal parent for long periods of time while they await adoption.

Furthermore, as the petition requires no responsive pleading, the additional proceeding has no effect. The proceeding only creates substantial delay, additional legal expenses which must be borne by the adoptive parents, and increases use of valuable Court resources. Currently, birth parents who seek to challenge a petition for adoption may do so by appearing in court or filing a motion. They gain no further rights under this proceeding.

The time delays caused by this proceeding are substantial. Currently, a petition for adoption may be filed immediately after placement. Provided all consents or waivers are secured, an adoption may be finalized ninety (90) days after placement. Proposed section 63.089 requires thirty (30) days notice after service of process before a hearing on a Petition to Terminate Rights may be held. If the adoptive parents must publish to provide proper service to any man who reasonably may be the father, they must wait sixty (60) days after diligent search and publication prior to holding a hearing to terminate rights. After a delayed order terminating parental right is entered, the adoptive parents must wait an additional thirty (30) days before filing a Petition for adoption. These delayed time periods are unnecessary and potentially harm the best interest of a child. Currently, Chapter 39 provides that parents subject to termination of parental rights petitions are entitled to a hearing as soon as reasonably possible, much earlier than 30 days. If a birth parent seeks to challenge an adoption placement, the courts should proceed expeditiously, as delays cause a child to further bond with adoptive parents who may lose custody of the child.

Subsection 63.089 requires a full evidentiary hearing in all adoption proceedings. Again, the large majority of such proceedings are uncontested. This additional proceeding requires that the adoptive parents incur additional legal expenses. Currently, the law protects birth parents by requiring a full evidentiary hearing upon challenge to a petition for adoption. In the non-contesting case, the adoptive parents must also bear this additional unnecessary cost.

While these proceedings require the adoptive parent to incur many additional expenses and costs, no requirements are placed upon the birth parents. Proposed section 63.089 does not even require that birth parents appear in court to protect their rights. This section allows written denial of a petition to terminate rights. All other statutes concerning termination of parental rights mandate the personal appearance of the parent. Without a personal appearance, the Court would be unable to proceed in the case and conduct the mandatory inquiries. Moreover, any parent truly serious about maintaining parental rights should personally appear before the Court. These provisions would apply to any man who reasonably may be the father, regardless of his attempts to support the birth mother and the child.

14. Proposed section 63.087(6)(b): Standing to File Petition to Terminate Rights

This subsection allows only a birth parent or legal guardian of a minor to file a petition for termination of parental rights. The proposed law changes the custodial arrangements for a child after a birth parents signs a consent for adoption. Under current law the adoptive parent becomes guardian of the child. As proposed, neither the adoption entity nor the adoptive parents may become the legal guardian of the child. Thus, the birth mother must petition the court to terminate her own legal rights to her child. This procedure makes an adoption extremely stressful and potentially traumatic for the birth parent. Moreover, the birth mother is now a party to the proceeding and could potentially request records which would provide confidential information regarding the adoptive parents.

15. Proposed section 63.088(4) & (5): Diligent Search and Inquiry & Publication

Subsection 63.088(4) mandates a diligent search and inquiry much greater than the burden currently placed upon the Department of Children & Families in Chapter 39 Termination of Parental Rights proceedings. This extensive diligent search requires that the adoptive parents search records to which they may not have standing to gain access: re: pension records, utility company records, tax records. This would be an extensive and expensive search which may be impossible to complete. Unlike the Department of Children & Families, adoption entities may not access certain private records.
Subsection 63.088(5) requires that the adoption entity publish their intent to terminate parental rights by publishing information on the birth mother and the child. This is an affront to the privacy of the birth mother. According to the provision, this must be done as to any man who reasonably may be the father of the child regardless of any history of rape or abuse upon the birth mother, and could be emotionally devastating for the birth mother.


This subsection substantially changes affirmative duties which a birth father currently has to provide emotional and financial support to the birth mother during her pregnancy. This provision effectively overturns and ignores United States and Florida Supreme Court precedent on parental rights. Pursuant to this provision, a court may not waive the birth father's consent for failing to provide emotional support to the birth mother, thus stripping the birth mother of the ability to choose an adoption in the best interest of her child when she is emotionally abandoned and abused by the birth father.

The proposed statute also places an additional burden upon the birth mother to prove abandonment by the birth father. In order to make an adoption decision in the best interests of her child, she must affirmatively show that the father or any man who may reasonably be the father:

1. has demonstrated a willful disregard for the safety of the child.
2. has not been prevented from making efforts towards the child by any person.
3. was provided with a request for financial support.
4. has refused to pay for medical treatment when insurance or other State funded resources would not pay for such treatment.
5. provided only nominal funds which were insufficient to provide for the child's needs given the relative ability to pay of the parties.
6. knew her whereabouts and was advised of all medical appointments and tests relating to the child or pregnancy.

The above burden is much greater than the burden placed upon the Department of Children and Families when seeking termination for abandonment in a Chapter 39 proceeding. Most importantly, it is degrading and strips a birth mother of her right to choose adoption as an option for her child, forcing her to parent a child that she cannot afford and prepare for a life of fighting to receive child support from a father who did not support her during her pregnancy. These burdens would require a woman who has been abused by the birth father to initiate constant contact so that she can prove an abandonment claim. She also maintains this burden to contact him even after he moves with no notice to her, causing her to search for him to give him proper notice. The proposed statute allows a father to sit back and wait for the birth mother to come begging for money despite her obvious need. It also allows a birth father to rely on State funds such as Medicaid to pay for his responsibilities, a burden this State cannot afford.

17. Proposed Section 63.089(4)(b): Abandonment by Habitual Criminals

This subsection authorizes a court to determine that a child is abandoned by the birth parent when the parent is incarcerated for a sentence of eight (8) years or more and the parent's criminal history meets specific delineated criteria. This is a positive provision which will serve to provide a child permanency when a parent is not available to raise the child. This provision is consistent with similar provisions in Chapter 39.

18. Proposed Section 63.089(5)(e): Authority to Order Paternity Testing

This subsection provides the Court with authority to order paternity testing. This is an important inclusion into the statute allowing all potential issues to be resolved by the same judge.


This subsection prohibits the payment of any expenses incurred by the birth mother prior to the time that the adoptive parents contracted with the adoption entity. This provision would prohibit adoptive parents from receiving...
reimbursement when a birth mother backs out of a situation and is matched with other adoptive parents through another adoption entity. This would necessarily increase the risk and expense to adoptive parents.

20. Proposed section 63.132(c): Confidential Record Publication by the Florida Department of Children & Families

This subsection requires that the Department of Children & Families retain extensive records on each adoption filed in the State of Florida and pay staff to redact confidential information. This would not only increase the costs to Florida's taxpayers, but creates great risk of unintentional release of confidential information to the public. Historically, the Department of Children & Families fails to comply with the duties imposed upon it under Florida Law. This law would allow birth mothers to comparison shop for the adoption entity which pays the highest living expenses.

21. Proposed Section 63.132(d)(5): Expenses

This section requires an affidavit seeking approval of expenses that could be covered by State sponsored programs. Again, this provision mandates that birth parents access state funds at the expense of Florida's budget and Florida taxpayers.

22. Proposed Section 63.207: Prohibition Against Out of State Placements

This section prohibits any adoption entity from placing a child with a family which resides outside of the State of Florida unless the child is a member of a minority group or is otherwise special needs. This prohibition wrongly treats children as a commodity of the State of Florida and discriminates against minority children by sending a message that they are not a desirable commodity of the State. This provision would limit a birth parent's right to choose an appropriate home for a child and violates the child's constitutional right to travel.

Only one state has a statute which contains similar prohibitions. The case law in that state (South Carolina) creates exceptions to the law which have rendered the law powerless.
APPENDIX F

RESULTS OF POLLING FLORIDA ADOPTION PROFESSIONALS REGARDING PSYCHO/SOCIAL BACKGROUNDS OF CHILDREN PLACED FOR ADOPTION

Twenty-three Florida adoption lawyers and social workers responding to a survey in the summer of 1998 responded as shown to the following queries:

I. Please indicate whether the following are typical of the psycho/social backgrounds of children in whose adoptions you have been professionally involved:

<table>
<thead>
<tr>
<th>Typical</th>
<th>Occasional</th>
<th>Atypical</th>
<th>No Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>23</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>2</td>
<td>13</td>
<td>7</td>
<td>1</td>
</tr>
<tr>
<td>12</td>
<td>11</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>8</td>
<td>14</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>5</td>
<td>16</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>3</td>
<td>10</td>
<td>10</td>
<td>0</td>
</tr>
<tr>
<td>1</td>
<td>15</td>
<td>7</td>
<td>0</td>
</tr>
<tr>
<td>4</td>
<td>11</td>
<td>8</td>
<td>0</td>
</tr>
<tr>
<td>4</td>
<td>14</td>
<td>5</td>
<td>0</td>
</tr>
<tr>
<td>13</td>
<td>10</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>14</td>
<td>7</td>
<td>2</td>
<td>0</td>
</tr>
</tbody>
</table>

1. child newborn to age 5
2. child suffering/likely to suffer physical, developmental, learning or mental disabilities
3. parent lacking planning/follow-through skills
4. parent possessing decreased emotional/mental stability and control, including immaturity due to young age
5. parent engaging in or having history of alcohol/substance abuse/gambling
6. parent having history of mental illness and/or psychiatric admission
7. parent having history of incarceration
8. parent having history of perpetrating or being victim of abuse/neglect
9. parent having negative history as to any other of his/her children (estrangement, nonsupport, abandonment, removal)
10. history of instability in parent's family of origin
11. parent lacking the external support of family and friends
Please list by number which of the above background characteristics, if any, you consider as risk factors for child abuse or neglect based on your professional experience:

1. lack of community resources in location where parent resides or would reside with child
2. parent being socially isolated
3. parent in unstable marriage to party other than child's other parent
4. parent possessing low level of primary education/skills training
5. parent illiterate
6. parent unemployed for more than three months
7. parent highly transient
8. parent housed inadequately

II. Please list by number which of the above background characteristics, if any, you consider as risk factors for child abuse or neglect based on your professional experience:

(1) 2 (2) 8 (3) 8 (4) 16 (5) 16 (6) 12 (7) 11 (8) 18 (9) 12 (10) 10 (11) 13 (12) 12 (13) 8 (14) 11 (15) 9 (16) 16 (17) 7 (18) 10 (19) 6 (No Response) 3

III. Please indicate whether you agree or disagree with the following statement: A birth mother who has voluntarily surrendered her child for adoption should not be able to reclaim the child herself if the birth father subsequently objects to the adoption and the placement is disrupted.

0 Agree: The mother has made her decision about parenting the child and it should be final; the father should get sole custody
8 Uncertain: The mother should not get automatic custody, but she should have a right to request custody.
14 Disagree: Matters should go back to the way they stood before the mother surrendered; the mother should have custody unless and until the father proves her to be unfit
1 No Opinion
APPENDIX G

FORM FOR WORKSHEET FOR BIRTH MOTHER'S AFFIDAVIT

BIRTH MOTHER'S AFFIDAVIT WORKSHEET RE: BIRTH FATHER

DIRECTIONS: TO BE COMPLETED BY BIRTH MOTHER, WITH STAFF ASSISTANCE/REVIEW

I. Does the birth father know you are pregnant and that you believe he is the father of your child? Yes _________ No _________

II. If known, please provide the birth father's:
   A. Full legal name ____________________________
   B. Current address ____________________________
   C. Current telephone __________________________
   D. Social security number ______________________
   E. Date of birth ______________________________
   F. Current work telephone ______________________

III. If the birth father's current location is not known, please provide his:
   A. Last known address __________________________
   B. Last known telephone ________________________
   C. Birth father's friends or relatives who may know how to reach him (with their addresses and telephone numbers)
   ___________________________________________________________________________________
   ___________________________________________________________________________________
   ___________________________________________________________________________________

IV. Additional identifying/locating information you may know regarding the birth father:
   ___________________________________________________________________________________
   ___________________________________________________________________________________

V. Date you last saw the birth father ________________________________
   Date you last talked on the phone with the birth father __________________________
   Date you last received any written communication from the birth father ________________
   Address at which birth father last knew you to be residing __________________________
   ___________________________________________________________________________________

VI. If more than one man may be the birth father, please provide information requested in II. and III. for such other man or men on the back of this sheet.

If none others, please write "none" here: ____________________________________________________________________________________
VII. Are you now married or were you married at any time during the past twelve (12) months?
   Yes _________ No _________

   If yes, please provide:
   A. Husband’s name ____________________________________________
   B. Husband’s address __________________________________________
   C. Husband’s telephone _________________________________________
   D. Husband’s date of birth ______________________________________
   E. Husband’s social security no. _________________________________
   F. Date of marriage ____________________________________________
   G. Date of divorce (if applicable) _________________________________
   H. Date of death (if applicable) _________________________________

VIII. Were you living with any man other than those named in II., VI., and VII., above, within the past twelve (12) months?
   Yes _________ No _________

   If yes, please provide the information requested in II. through V., above, on the back of this page.

IX. Has any man, other than those you have listed in II., VI., VII., and VIII., above, claimed to be the father, given you support, promised you support, or been named as the father of your child in connection with receiving welfare payments?
   Yes _________ No _________

   If yes, please provide the information requested in II. through V., above, on the back of this page.

X. Do you have other children?
   Yes _________ No _________

   If yes, please provide:
   Child’s Name ___________________________ Date of Birth ____________
   Father’s Name ___________________________

   Child’s Name ___________________________ Date of Birth ____________
   Father’s Name ___________________________

XI. Please provide the following information:
   A. City, county, state where child was conceived ______________________
   B. Cities, counties, states in which you resided/have been residing while pregnant ______________________
   C. Your permanent address _________________________________________
   D. Your next of kin/emergency contact __________________________________

KNOWING THE IMPORTANCE of providing as much accurate and complete information as I have regarding the identity and location of the birth father of my child, I hereby certify that I have completed the foregoing form to the best of my knowledge.

X ___________________________  X ___________________________
Birth Mother  Agency Representative

__________________________
Date
APPENDIX H

FORM FOR NOTICE OF ACTION AND HEARING
FOR PROPOSED TPRPA PROCEEDING

IN THE CIRCUIT COURT OF THE _______ JUDICIAL CIRCUIT
IN AND FOR _______ COUNTY, FLORIDA

In the Interest of: JUVENILE DIVISION

__________________________ CASE NO.: ____________

__________________________ a Child.

__________________________

NOTICE OF ACTION AND HEARING

TO: Names and addresses of all putative fathers and/or unknown claimants, as well as any

YOU ARE HEREBY NOTIFIED that a hearing on a Petition for Termination of Parental
Rights Pending Adoption as to the Child herein, born ________________ to ________________, will be
held before this Court

AT _______________ COUNTY COURTHOUSE, ROOM ______,

[address] ________________________

THE HONORABLE ________, PRESIDING, TELEPHONE ( ) ______

ON ________, AT ___ O’CLOCK __m.

YOU MUST EITHER APPEAR on the date and at the time specified or send a written response
to the Court before that time, with a copy to attorney for Petitioner, [name and address]. FAILURE TO
PERSONALLY RESPOND TO THIS NOTICE OR TO APPEAR AT THIS HEARING
CONSTITUTES CONSENT TO TERMINATION OR PARENTAL RIGHTS AS TO THIS
CHILD (OR THESE CHILDREN).

YOU HAVE THE RIGHT TO BE REPRESENTED BY AN ATTORNEY. IF YOU WANT
AN ATTORNEY AND CANNOT AFFORD ONE, THE COURT WILL APPOINT ONE AT NO
CHARGE TO YOU IF YOU SO REQUEST.

YOU HAVE THE DUTY TO INFORM THE COURT AND ATTORNEY FOR
PETITIONER, BY CERTIFIED MAIL AT THE ADDRESSES SHOWN ABOVE, OF ANY
CHANGE IN YOUR ADDRESS.

WITNESS MY HAND AND THE SEAL OF THIS COURT __ day of _____, 19 __.

__________________________, CLERK

COURT SEAL

By: X ___________________________

Deputy Clerk
APPENDIX I

CLERK’S AFFIDAVIT OF COMPLIANCE WITH MAILING REQUIREMENTS FOR CONSTRUCTIVE SERVICE OF PROCESS

IN THE CIRCUIT COURT OF THE _______ JUDICIAL CIRCUIT
IN AND FOR _______ COUNTY, FLORIDA

In the Interest of:                JUVENILE DIVISION

______________________________,  CASE NO.: _____________

______________________________,  a Child.

_________________________________________________________________

CLERK’S AFFIDAVIT OF MAILING NOTICE OF ACTION

TO__________________________

STATE OF FLORIDA

COUNTY OF __________________

BEFORE ME, the undersigned authority, appeared _____________, personally known to me or who produced as identification _____________, and being first duly sworn, deposes and says:

1. that s/he is a Deputy Clerk of the Office of the Clerk of the Circuit Court in and for ___________ County, Florida, Juvenile Division, as such makes this Affidavit from her/his own personal knowledge, and is over the age of eighteen.

2. that s/he did execute a Notice of Action and Hearing (‘the Notice’) to one _____________ on ____________, a copy of which is attached hereto as Exhibit "A".

3. that s/he did mail a copy of the Notice by United States mail, with postage prepaid, to said _____________, at _____________, within 10 days after making the Notice, to wit, on ____________, together with a copy of the Petition for Termination of Parental Rights Pending Adoption herein, and noted upon the docket the date of mailing.

4. that, as of the date of this Affidavit, the Notice so mailed to _____________ has not been returned by the United States Postal Service as undeliverable.

FURTHER AFFIANT SAYETH NAUGHT.

AFFIANT’S SIGNATURE: X__________________________

PRINT NAME: ____________________________, Deputy Clerk

DATE: ________________________________

WITNESS MY HAND AND SEAL this _____ day of _____, 19____.

NOTARIAL SEAL ____________________________

Notary Public
APPENDIX J

BIRTH PARENT’S READINESS ACKNOWLEDGEMENT

IN THE CIRCUIT COURT OF THE ________ JUDICIAL CIRCUIT
IN AND FOR ______________ COUNTY, FLORIDA

In the Interest of:

________________________________________

JUVENILE DIVISION

CASE NO.: __________________

a Child.

BIRTH PARENT’S READINESS ACKNOWLEDGEMENT

Please read and, if you agree, initial each of the following statements before signing the papers (called “Surrender and Consent for Adoption with Waiver of Notice, Service of Process, and Right to Counsel”) allowing your child to be adopted.

1. You have read and understand what you are about to sign and have no questions about the papers or procedures involved. __________

2. You are aware that you have the right to have your own independent lawyer explain these papers to you at no charge to you. __________

3. You understand that when you sign these papers you are permanently ending all your rights as birth parent of this child, and you will not be given notice of any of the court proceedings for the adoption of your child. __________

4. You understand that unless he or she chooses to locate you after age 18, you may never see your child again. __________

5. You are aware that there are choices other than adoption for you and your child, including putting the child into foster care for a while or keeping the child yourself. __________

6. You are aware that you could choose to take more time to decide what to do. __________

7. You are signing these papers of your own free will. __________

8. You feel well enough emotionally and physically to sign these papers. __________

9. You are not under the influence of any prescribed medication or other drugs that would affect your ability to understand what you are doing. __________

10. You are not under the influence of alcohol. __________

Page 1 of 2

Initials ___
BIRTH PARENT’S READINESS ACKNOWLEDGEMENT

Please read and, if you agree, initial each of the following statements before signing the papers (called “Surrender and Consent for Adoption with Waiver of Notice, Service of Process, and Right to Counsel”) allowing your child to be adopted.

11. You acknowledge receiving copies of all the papers you are signing.

I HAVE READ AND UNDERSTAND THE PREVIOUS 11 STATEMENTS.

BIRTH PARENT’S SIGNATURE: X________________________

PRINT NAME: _______________________________________

DATE: _____________________________________________

STATE OF FLORIDA

COUNTY OF ____________________

BEFORE ME, an officer authorized to take acknowledgments, appeared __________, personally known to me or who produced as identification ________, and acknowledged that s/he did execute the foregoing Birth Parent’s Readiness Acknowledgement freely, voluntarily and for the purposes stated therein.

WITNESS MY HAND AND SEAL in the state and county last aforesaid this _______ day of ____________________, 19___.

NOTARIAL SEAL

Notary Public

Page 2 of 2

Initials ___