

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Children, Families, and Elder Affairs Committee

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BILL: SB 2228

INTRODUCER: Senator Siplin

SUBJECT: Child Support

DATE: March 23, 2008

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Ray	Jameson	CF	<b>Unfavorable</b>
2.	_____	_____	JU	_____
3.	_____	_____	GA	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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**I. Summary:**

Senate Bill 2228 amends s. 742.18, F.S., relating to the disestablishment of paternity or the termination of child support obligations. The bill eliminates the current requirement that a petitioner for disestablishment of paternity and termination of an existing child support obligation must be current on his child support obligation or that if he is not current that the delinquency is based on his inability to pay.

The bill requires the court to provide relief to a man, who is entitled to relief based upon a disestablishment of paternity, from past due child support payments in addition to prospective child support payments, which is current law.

This bill substantially amends s. 742.18, F.S.

**II. Present Situation:**

**Establishment of Paternity**

Paternity for children born out of wedlock is established by:<sup>1</sup>

- Adjudicatory hearings by a court under statutes governing inheritance, or dependency under workers' compensation or similar compensation programs;
- Affidavits acknowledging paternity or a stipulation of paternity executed by both parties and filed with a clerk of court;

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<sup>1</sup> Section 742.10(1), F.S.

- Affidavits, notarized voluntary acknowledgements of paternity, or a voluntary acknowledgement of paternity that is witnessed by two individuals and signed under the penalty of perjury; or
- Administrative adjudications of paternity by the Department of Revenue.

A voluntary acknowledgment of paternity which was not made as part of an adjudicatory hearing creates a rebuttable presumption of paternity. Additionally, the acknowledgement may be rescinded within 60 days after the acknowledgement was signed. After the 60-day period, a voluntary acknowledgement of paternity can be challenged in court only on the basis of fraud, duress, or material mistake of fact.<sup>2</sup>

### **Disestablishment of Paternity or Termination of a Child Support Obligation**

Current law provides that a male may disestablish paternity or terminate a child support order when he is not the biological father of the child by filing a petition in circuit court and providing notice of the petition to specified individuals including the mother or legal guardian of the child.<sup>3</sup> The petition must include the following:<sup>4</sup>

- An affidavit executed by the petitioner that new evidence has been discovered since the initial paternity determination or establishment of a child support obligation relating to the paternity of the child;
- Scientific testing results showing a probability of paternity, administered within 90 days prior to the filing of such a petition, which indicate that the man ordered to pay child support, cannot be the father. If a male does not have access to the child, but suspects that he is not the father, he may petition the court to order the child be tested;
- An affidavit executed by the petitioner that the petitioner is current on all child support payments for the child for whom relief is sought or that he has substantially complied with his order.

A court is required to grant relief if it finds the following:<sup>5</sup>

- The petitioner has discovered new evidence relating to the paternity of the child since the initial paternity determination or establishment of a child support obligation;
- The scientific testing was properly conducted;
- The male ordered to pay child support is current on all payments for the applicable child or has substantially complied with his obligation;
- The male ordered to pay child support has not adopted the child;
- The child was not conceived by artificial insemination while the male and the child's mother were in wedlock;
- The male ordered to pay child support did not prevent the biological father from asserting his parental rights; and
- The child was younger than 18 years of age when the petition was filed.

<sup>2</sup> Section 742.10, F.S.

<sup>3</sup> Section 742.18(1), F.S.

<sup>4</sup> Sections 742.18(1)(a) – (c), F.S.

<sup>5</sup> Sections 742.18(2)(a)-(g), F.S.

A court will not set aside the paternity determination or child support order if the male married the mother and assumed the parental obligation and duty to pay child support; acknowledged his paternity in a sworn statement; consented as the child's biological father on the child's birth certificate; volunteered in writing to support the child and was required to support the child based on that promise; disregarded written notice to submit to scientific testing, or signed a voluntary acknowledgement of paternity.<sup>6</sup>

If the court grants relief, it must be limited to the issues of prospective child support payments and termination of parental rights, custody, and visitation rights.<sup>7</sup> The court may not suspend the obligation to pay support or other obligations in the order while the petition is pending, except for good cause. The court may order that support payments be held in the registry of the court until final determination of paternity is made.<sup>8</sup>

### III. Effect of Proposed Changes:

The bill amends s. 742.18, F.S., relating to disestablishment of paternity and termination of child support obligations. The bill strikes the term "male" in several places and inserts the term "man ordered to pay child support," "man," or "petitioner."

The bill removes the requirement that the petition be served on the mother or other legal guardian or custodian if the petition is filed in the circuit court having jurisdiction over the obligation. However, the bill leaves the notice requirement in the statutes following the provision for administratively-determined child support obligations. The statute is silent regarding notice to the mother or legal guardian who no longer resides in the state. This change makes the notice provision unclear.

The bill strikes the term "father" and inserts the term "biological father."

The bill deletes s. 742.18(1)(c), F.S., relating to the requirement that a petitioner's affidavit include:

- A statement that the petitioner is current on all child support payments; or
- Has substantially complied with his obligation and any delinquent support is a direct result of his inability to pay.

The bill deletes s. 742.18(2)(c), F.S., that requires the court, before granting relief on a petition, to find that the male:

- Is current on his child support payments; or
- Substantially complied with his child support obligation and that any delinquent child support amount is a direct result of his inability to pay.

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<sup>6</sup> Section 742.18(3), F.S.

<sup>7</sup> Section 742.18(5), F.S.

<sup>8</sup> Section 742.18(6), F.S.

These changes allow a man who has a delinquent child support obligation, to disestablish paternity.

Currently, when an individual's paternity is disestablished, he is given relief from several things including prospective child support. The bill expands this relief provision, found in s. 742.18(5), F.S., by allowing relief from past due child support payment obligations in addition to the relief currently given from prospective child support payments.

The bill amends s. 742.18(8), F.S., to provide that if relief is granted to a petitioner, the child's birth certificate will be amended to remove the father's name on court order, in accordance with s. 382.016(1)(c), F.S.

The bill provides an effective date of July 1, 2008.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

#### **VI. Technical Deficiencies:**

On lines 23 and 88, the term "male" is changed to "man ordered to pay child support." According to the Department of Revenue (DOR), this assumes that the petitioner is subject to a child support order, which may not be the case. A man, who is not required to pay child support, may wish to disestablish paternity.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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