

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Judiciary Committee

BILL: CS/SB 510

SPONSOR: Judiciary Committee and Senators Fasano and Posey

SUBJECT: De Facto Custody of a Child

DATE: February 25, 2005 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Maclure</u>	<u>JU</u>	<u>Fav/CS</u>
2.	_____	_____	<u>CF</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This committee substitute identifies and authorizes additional family members to bring a petition in court for temporary custody of a child. The committee substitute provides this authority to any extended family member who is related within the third degree by blood or marriage to the parent or stepparent of a child and who is caring full-time as a substitute parent for the child or for the child and a half-sibling of the child.

Additional criteria are added to current petition requirements, to include information regarding parental fitness; child support, attorney's fees, costs, and disbursements; whether a protective order exists; and that it is in the child's best interests for the petitioner to have temporary custody.

This committee substitute clarifies that only an extended family member or putative father can file a petition for temporary custody. This committee substitute authorizes the parents to petition the court any time to modify an existing temporary custody order, in addition to current authority to petition the court to terminate an existing order.

This bill substantially amends the following sections of the Florida Statutes: 751.011, 751.02, 751.03, and 751.05.

II. Present Situation:

Temporary Child Custody

Chapter 751, F.S., addresses the issue of temporary child custody by extended family members. The purpose of this statute is to provide temporary custody to a family member or putative father

with physical custody in order to allow that person to consent to necessary medical and dental care, obtain necessary copies of the child's records, and enroll the child in school and grant or withhold consent for a child to be tested or placed in special school programs.¹ Due to the care provided them by extended family members, these children are not considered to be dependent.² This law grants authority to extended family, defined as the child's brother, sister, grandparent, aunt, uncle, or cousin,³ to petition for temporary custody of the minor child.⁴ A putative father, or a person who reasonably believes that he is the biological father of the minor child, but is unable to prove paternity due to the absence of the child's mother, is also eligible for temporary custody, but only when he is unable to provide personal service of process on the child's mother.⁵ Otherwise, he is required to petition for permanent custody.⁶

A petition for temporary custody is required to contain:

- Name, date of birth, and current address of the child;
- Names and current addresses of the child's parents;
- Names and current addresses of persons with whom the child has lived for the last 5 years;
- Places where the child has lived for the last 5 years;
- Information on any other custody proceedings;
- Contact information of the petitioner;
- Petitioner's relationship to the child, including reasons for the putative father to believe he is the natural father, where applicable; and
- Consent of the parents or details of the child's current living situation with the petitioner.⁷

Parents of the minor child are required to be given reasonable notice and an opportunity to be heard by personal or constructive service of process.⁸ Personal service of process is satisfied where a copy is delivered to the person to be served or left at the person's place of residence with another resident 15 years or older.⁹ Substitute service of process may be made on the spouse of the person to be served at any place in the county, only where the cause of action is not adversarial between the spouse and the person to be served, the spouse requests service, and the spouse and person to be served reside together.¹⁰ Constructive service of process by publication is permissible in temporary custody of action proceedings.¹¹ Service by publication requires a notice of action to be published once each week for 4 consecutive weeks in a newspaper published in the same county as the court.¹²

¹ s. 751.01(3), F.S.

² s. 751.01(1), F.S.

³ s. 751.011(1), F.S.

⁴ s. 751.02, F.S.

⁵ s. 751.02, F.S.

⁶ *Id.*

⁷ s. 751.03, F.S.

⁸ s. 751.04, F.S.

⁹ s. 48.031(1)(a), F.S.

¹⁰ s. 48.031(2)(a), F.S.

¹¹ s. 49.011(14), F.S.

¹² s. 49.10(1)(a), F.S.

At the hearing, unless the parents object, the court is required to award temporary custody of the child to the petitioner when it is in the best interests of the child.¹³ If a parent objects, the court can only award temporary custody upon a finding, by clear and convincing evidence, that the parent or parents are unfit, such that the parent has abused, abandoned, or neglected the child.¹⁴ A temporary custody order may also grant visitation rights to the parent or parents, if it is in the child's best interest.¹⁵ However, the order may not include provisions for child support unless the parents have been served with personal or substituted process, the petition requests an order for support, and evidence shows the parent's ability to pay.¹⁶ The court is not permitted to include a determination of paternity in an order granting temporary custody to a putative father.¹⁷ A parent or parents may petition the court at any time to terminate the temporary custody order, upon the finding that the parent is a fit parent, or by joint consent.¹⁸

Other than extended family, other family members or non-relatives are not authorized to request temporary custody under chapter 751, F.S.

III. Effect of Proposed Changes:

This committee substitute expands current authority to certain family members to bring a temporary custody petition in court, to include any extended family member who is related within the third degree by blood or marriage to the parent or stepparent of a child and who is caring full-time as a substitute parent for the child or the child and a half-sibling of the child.

Additional criteria are added to current petition requirements, to include

- All information concerning fitness of the parents to raise the child, including whether either parent has abused, abandoned, or neglected the child;¹⁹
- Any temporary or permanent child support, attorney's fees, costs, and disbursements;

¹³ s. 751.05(2), F.S.

¹⁴ s. 751.05(3), F.S.

¹⁵ s. 751.05(4), F.S.

¹⁶ s. 751.05(5), F.S.

¹⁷ s. 751.05(6), F.S.

¹⁸ s. 751.05(7), F.S.

¹⁹ Chapter 39.01, F.S., provides definitions for the following: Abandoned: "a situation in which the parent or legal custodian of a child or, in the absence of a parent or legal custodian, the caregiver responsible for the child's welfare, while being able, makes no provision for the child's support and makes no effort to communicate with the child, which situation is sufficient to evince a willful rejection of parental obligations. If the efforts of such parent or legal custodian, or caregiver primarily responsible for the child's welfare, to support and communicate with the child are, in the opinion of the court, only marginal efforts that do not evince a settled purpose to assume all parental duties, the court may declare the child to be abandoned." Abandonment may include a parent's, legal custodian's, or caregiver's incarceration; Abuse: "any willful act or threatened act that results in any physical, mental, or sexual injury or harm that causes or is likely to cause the child's physical, mental, or emotional health to be significantly impaired." An exception is made for corporal discipline without resulting harm; Neglect: "when a child is deprived of, or is allowed to be deprived of, necessary food, clothing, shelter, or medical treatment or a child is permitted to live in an environment when such deprivation or environment causes the child's physical, mental, or emotional health to be significantly impaired or to be in danger of being significantly impaired." A situation is not considered neglect based on financial inability unless services are available and otherwise rejected. Failing to secure medical treatment based on religious beliefs may not constitute neglect unless a child's health requires certain medical treatment. Abuse or neglect may include acts or omissions.

- Whether an order of protection governing the parties or a party and a minor child of the parties or party is in effect and if so, the court that entered the order; and
- That it is in the child's best interests for the petitioner to have temporary custody.

This committee substitute clarifies that only an extended family member or putative father can file a petition for temporary custody. Currently the child's parents are authorized to petition the court at any time to terminate the order granting temporary custody, and this committee substitute additionally authorizes the parents to petition the court to modify an existing temporary custody order.

This committee substitute takes effect July 1, 2005.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
