

By Senator Fasano

11-309-05

1 A bill to be entitled

2 An act relating to de facto custody of a child;

3 requesting that the Division of Statutory

4 Revision revise the title of chapter 751, F.S.;

5 amending s. 751.011, F.S.; providing

6 definitions relating to de facto custodians;

7 creating s. 751.10, F.S.; specifying

8 circumstances under which a person may file a

9 petition to become the de facto custodian of a

10 child; detailing the matters that must be in

11 the petition filed by the petitioner; requiring

12 that reasonable notice of the custody hearing

13 be given to specified persons; providing for a

14 hearing; requiring that if an objection to the

15 petition is filed, the court may grant the

16 petition only if the petitioner shows by clear

17 and convincing evidence that it is in the best

18 interest of the child for the petitioner to be

19 the de facto custodian; providing that support

20 for the child may be ordered only under certain

21 circumstances; providing for the termination of

22 the order granting de facto custody; providing

23 an effective date.

24

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

26

27 Section 1. The Division of Statutory Revision is

28 requested to change the title of chapter 751, Florida

29 Statutes, to "CUSTODY OF MINOR CHILDREN BY EXTENDED FAMILY AND

30 DE FACTO CUSTODIANS."

31

1 Section 2. Section 751.011, Florida Statutes, is
2 amended to read:

3 751.011 Definitions.--As used in this chapter ~~ss.~~
4 ~~751.01-751.05~~, the term:

5 (1) "De facto custodian" means an individual who has
6 been the primary caregiver for a child who has, within the 24
7 months immediately preceding the filing of the petition,
8 resided with the individual without a parent present and with
9 a lack of demonstrated consistent participation by a parent
10 for a period of:

11 (a) Six months or more, which need not be consecutive,
12 if the child is younger than 3 years of age; or

13 (b) One year or more, which need not be consecutive,
14 if the child is 3 years of age or older.

15
16 A de facto custodian does not include a person who has a child
17 placed in his or her care through a custody consent decree, a
18 court order, or a voluntary placement or for adoption under
19 chapter 61.

20 (2)~~(1)~~ "Extended family" means ~~is~~ any family composed
21 of the minor child and a relative of the child who is the
22 child's brother, sister, grandparent, aunt, uncle, or cousin.

23 (3) "Lack of demonstrated consistent participation by
24 a parent" means a refusal or neglect to comply with the duties
25 imposed upon the parent by the parent-child relationship,
26 including, but not limited to, providing the child with
27 necessary food, clothing, shelter, health care, and education;
28 creating a nurturing and consistent relationship; and
29 providing other care and control necessary for the child's
30 physical, mental, or emotional health and development.

31

1 (4) "Other person responsible for a child's welfare"
2 has the same meaning as in s. 39.01(47).

3 (5) "Parent" has the same meaning as in s. 39.01(49).

4 (6)(2) "Putative father" means is a man who reasonably
5 believes himself to be the biological father of the minor
6 child, but who is unable to prove his paternity due to the
7 absence of the mother of the child.

8 (7) "Relative" has the same meaning as in s.
9 39.01(60).

10 Section 3. Section 751.10, Florida Statutes, is
11 created to read:

12 751.10 De facto custodians.--

13 (1) DETERMINATION OF DE FACTO CUSTODY.--Any person who
14 has the signed, notarized consent of the child's legal
15 parents, or any person with whom a child is presently living,
16 may bring proceedings in the circuit court to determine the de
17 facto custody of the child. The proceeding may be filed in the
18 county where the child permanently resides, where the child is
19 found, or where an earlier order of custody was entered.

20 (2) PETITION FOR DE FACTO CUSTODY; CONTENTS.--Each
21 petition for de facto custody of a minor child must be
22 verified by the petitioner and must contain statements, to the
23 best of petitioner's knowledge and belief, showing:

24 (a) The name, date of birth, and current address of
25 the child;

26 (b) The names and current addresses of the child's
27 parents;

28 (c) The length of time the child has lived with the
29 petitioner;

30 (d) The names and current addresses of the persons
31 with whom the child has lived during the past 5 years;

1 (e) The places where the child has lived during the
2 past 5 years;

3 (f) The current legal custodial status of the child
4 and a listing of all prior orders of custody, if known to the
5 petitioner;

6 (g) Information concerning any pending custody
7 proceeding in this or any other state with respect to the
8 child;

9 (h) The residence and post office address of the
10 petitioner;

11 (i) The petitioner's relationship to the child and the
12 extent to which the child has been cared for, nurtured, and
13 supported by the petitioner;

14 (j) The consent of the child's parents, if any, or the
15 circumstances of the child's current living situation with the
16 petitioner;

17 (k) Any temporary or permanent child support,
18 attorney's fees, costs, and disbursements;

19 (l) Whether an order of protection governing the
20 parties or a party and a minor child of the parties or party
21 is in effect and, if so, the court or similar jurisdiction in
22 which the order was entered; and

23 (m) That it is in the best interests of the child for
24 the petitioner to have de facto custody of the child.

25 (3) NOTICE AND OPPORTUNITY TO BE HEARD.--Before a
26 decree is made under this section, reasonable notice and an
27 opportunity to be heard must be given to the parents of the
28 minor child, relatives of the child, other persons responsible
29 for a child's welfare, and the child's tribe if the child is
30 an Indian child. Notice must be given by service of process,
31 either personal or constructive.

1 (4) ORDER GRANTING DE FACTO CUSTODY.--

2 (a) At the hearing on the petition for de facto
3 custody, the court must hear the evidence concerning the minor
4 child's need for care by the petitioner acting as the de facto
5 custodian, all other matters required to be set forth in the
6 petition, and the objections or other testimony of the child's
7 parents, relatives, or other persons responsible for the
8 child's welfare, if present.

9 (b) Unless the child's parents, relatives, or other
10 persons responsible for the child's welfare, object, the court
11 shall award the de facto custody of the child to the
12 petitioner if it is in the best interest of the child to do
13 so.

14 (c) If one of the minor child's parents, relatives, or
15 other persons responsible for a child's welfare objects to the
16 granting of de facto custody to the petitioner, the court
17 shall grant the petition only upon a finding, by clear and
18 convincing evidence, that the petitioner has satisfied all
19 matters required to be set forth in the petition and that the
20 child's parent or parents, or others, have exhibited a lack of
21 demonstrated consistent participation in the care of the
22 child. In determining that a parent or another lacks
23 consistent participation as a parent, the court must find that
24 the parent or another has abused, abandoned, or neglected the
25 child, as defined in chapter 39. The court must make detailed
26 findings and explain how the facts have led to its conclusions
27 and to the determination of the best interests of the child.

28 (d) The order granting de facto custody of the minor
29 child to the petitioner may also grant visitation rights to
30 the child's parent or parents if it is in the best interest of
31 the child to do so.

