

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 109 Temporary Custody of a Child  
**SPONSOR(S):** Anderson  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 118

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<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
1) Civil Justice Committee	_____	Kruse	Bond
2) Future of Florida's Families Committee	_____	_____	_____
3) Justice Council	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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**SUMMARY ANALYSIS**

Chapter 751, F.S., provides a procedure whereby a court may order that a relative of a minor child may be granted temporary legal custody of the child.

This bill expands the definition of which family members are entitled to petition for temporary custody, requires additional information in a petition for temporary custody, and allows court modification of a temporary custody order.

The bill does not appear to have a fiscal impact on state or local government.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Empower families — The bill may provide more authority to a family member who is actually caring for a child by authorizing that family member to make certain types of decisions on the child's behalf without having to obtain approval from the child's legal guardian each time one of those decisions must be made. However, this bill may require a parent to participate in an adversarial legal proceeding to gain custody of his or her child.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Current Law**

At times and for various reasons, a parent or parents of a minor child may be unable to provide care to that child. Chapter 751, F.S., provides that a relative or putative father who has the permission of the parents or who has physical custody of the child may be granted temporary legal custody of the child. Temporary custody is established in order to allow that person to consent to medical and dental care for the child, obtain copies of the child's records, enroll the child in school, grant or withhold consent for a child to be placed in special school programs, or to provide any necessary care to that child.<sup>1</sup> Because these children receive care from their extended family members, they are not considered dependent children, as defined in s. 39.01(14), F.S.

Section 751.011(1), F.S., defines "extended family" as a relative of the child who is the child's brother, sister, grandparent, aunt, uncle, or cousin. This definition, however, does not control who may seek temporary custody. Section 751.02, F.S., provides that any relative of a minor child who has the signed, notarized consent of the child's legal parents, or any relative of the child, including a putative father, with whom the child is presently living, may file a petition for temporary custody.

Section 751.03, F.S., provides that a petition for temporary custody must contain:

- The name, date of birth, and current address of the child;
- The names and current addresses of the child's parents;
- The names and current addresses of persons with whom the child has lived for the past 5 years;
- The places where the child has lived for the last 5 years;
- Information regarding any other custody proceedings in any state involving the child;
- The petitioner's contact information;
- The petitioner's relationship to the child, and for a putative father, the reasons for his belief that he is the natural father;
- The parents' consent or the factual situation of the child's current living situation with the petitioner; and
- The length of time that the petitioner is requesting temporary custody, with a statement of reasons supporting the request.<sup>2</sup>

If the parents do not object, the court must award temporary custody of the child to the petitioner if it is in the best interests of the child.<sup>3</sup> If a parent objects, the court may only award temporary custody if the court finds by clear and convincing evidence that the parent or parents are unfit, i.e., that the parent

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<sup>1</sup> Section 751.01(3), F.S.

<sup>2</sup> Section 751.03, F.S.

<sup>3</sup> Section 751.05(2), F.S.

has abused, abandoned, or neglected the child, as defined in ch. 39, F.S.<sup>4</sup> Chapter 751, F.S., proceedings do not provide a parent the right to counsel under these circumstances as is provided under ch. 39, F.S. (See “Constitutional Issues” below). Once an order of temporary custody has been entered, a parent or both parents may petition the court at any time to terminate the temporary custody order, based upon either the consent of the parties or a finding that the parent is a fit parent.<sup>5</sup>

Chapter 751, F.S., does not specifically give a court authority to modify a temporary custody order, nor does it prohibit a court from modifying a temporary custody order.

### **Effect of Bill**

The bill changes the definition of “extended family” in s. 751.011(1), F.S., to “extended family member.” “Extended family member” is defined by the bill as:

- Any person who is a relative within the third degree, by blood or marriage, to the parent or stepparent of a child and who is caring for the child full-time in the role of substitute parent; or
- Relatives within the third degree by blood or marriage to the parent or stepparent of a child and who is caring full time for that child, and a half-brother or half-sister of that child, in the role of substitute parent.

Currently, extended family only includes a child’s brother, sister, grandparent, aunt, uncle, or cousin. The new definition adds great-aunts, great-uncles, great-grandparents, and stepparents along with step-family members within the third degree of blood or marital relationship to the stepparent. However, by specifying which family members are entitled to petition for temporary custody, the bill also limits which family members may petition as well. A relative of the third-degree only extends to a first-cousin.

Additionally, this bill requires that the following additional information must be included in a petition for temporary custody:

- All information regarding the fitness of the parents to raise the child and information concerning whether the parent has abused, abandoned, or neglected the child;
- Any request for temporary or permanent child support, attorney’s fees, costs, and disbursements;
- A statement of whether an order of protection governing the parties, or a party and a minor child of a party or the parties, is in effect, and if so, in what jurisdiction; and
- A statement that it is in the best interests of the child for the petitioner to have custody of the child.

This bill also provides that the parent or parents may petition for modification, in addition to termination, of an order granting temporary custody.

The effective date of the bill is July 1, 2006.

### **C. SECTION DIRECTORY:**

**Section 1.** Amends s. 751.011(1), F.S., to change the definition of which family members are entitled to petition for temporary custody of a minor child.

**Section 2.** Amends s. 751.02, F.S., to provide that an extended family member may petition for temporary custody of a child under certain circumstances.

**Section 3.** Amends s. 751.03, F.S., to require additional information to be included in a petition for temporary custody, and to provide that only a putative father or extended family member may petition for temporary custody.

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<sup>4</sup> Section 751.05(3), F.S.

<sup>5</sup> Section 751.05(7), F.S.

**Section 4.** Amends s. 751.05(7), F.S., to provide that either or both of the child's parents may petition to modify, as well as to terminate, an order granting temporary custody.

**Section 5.** Provides an effective date of July 1, 2006.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Chapter 751, F.S., does not require legal counsel to be appointed to represent the parents in a temporary custody proceeding. The proceeding is similar in nature to a ch. 39, F.S., dependency proceeding and requires similar findings regarding parental fitness. Chapter 751, F.S., also specifically references ch. 39, F.S., and requires the court to make findings that would support an adjudication of dependency if the temporary custody petition was contested. However, it does not appear that the lack of appointed counsel in a ch. 751, F.S., proceeding is necessarily a violation of a constitutional right—the right to raise one's own children<sup>6</sup> because the constitutional right to counsel only extends to cases where the parent faces a permanent loss of parental rights or when a parent

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<sup>6</sup> *S.B. v. Dep't of Children & Families*, 851 So. 2d 689, 692-693 (Fla. 2003); *In Interest of D.B.*, 385 So. 2d 83, 90 (Fla. 1980).

may be charged with criminal child abuse.<sup>7</sup> However, it is possible that the facts giving rise to a temporary loss of parental rights through an award of temporary custody may later form the basis for a petition to terminate parental rights.<sup>8</sup>

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The phrase "or similar jurisdiction" on line 82 of the bill is confusing and perhaps should be removed.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

N/A.

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<sup>7</sup> S.B., 851 So. 2d at 692-693.

<sup>8</sup> See s. 39.806, F.S., grounds for termination of parental rights.