

By the Committees on Judiciary; and Children, Families, and Elder Affairs; and Senator Storms

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1 A bill to be entitled

2 An act relating to temporary and concurrent custody of
3 a child; revising ch. 751, F.S., relating to petitions
4 and court orders awarding the temporary custody of a
5 child to an extended family member, to also provide
6 for concurrent custody with the parents of the child;
7 amending ss. 751.01 and 751.02, F.S.; conforming
8 provisions to changes made by the act; amending s.
9 751.011, F.S.; revising definitions; defining the term
10 "concurrent custody"; amending s. 751.03, F.S.;
11 revising the petition for concurrent custody to
12 require additional information; amending s. 751.05,
13 F.S.; providing that if a parent objects to a petition
14 for concurrent custody, the court may not grant the
15 petition and must give the petitioner the option of
16 converting the petition to one for temporary custody;
17 providing for dismissal of the petition; providing
18 that an order granting concurrent custody does not
19 affect the ability of the parents to obtain the
20 physical custody of the child at any time; providing
21 for the court to terminate an order for concurrent
22 custody if a parent withdraws his or her consent to
23 the order; providing an effective date.

24
25 Be It Enacted by the Legislature of the State of Florida:

26
27 Section 1. Subsection (3) of section 751.01, Florida
28 Statutes, is amended to read:

29 751.01 Purpose of act.—The purposes of ss. 751.01-751.05

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30 are to:

31 (3) Provide temporary or concurrent custody of a minor
32 child to a family member having physical custody of the minor
33 child to enable the custodian to:

34 (a) Consent to all necessary and reasonable medical and
35 dental care for the child, including nonemergency surgery and
36 psychiatric care.~~†~~

37 (b) Secure copies of the child's records, held by third
38 parties, that are necessary for ~~to~~ the care of the child,
39 including, but not limited to:

- 40 1. Medical, dental, and psychiatric records;
- 41 2. Birth certificates and other records; and
- 42 3. Educational records;

43 (c) Enroll the child in school and grant or withhold
44 consent for a child to be tested or placed in special school
45 programs, including exceptional education.~~†~~~~and~~

46 (d) Do all other things necessary for the care of the
47 child.

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

50 751.011 Definitions.—As used in this chapter ~~ss. 751.01-~~
51 ~~751.05~~, the term:

52 (1) "Concurrent custody" means that an eligible individual
53 is awarded custodial rights to care for a child concurrently
54 with the child's parent or parents.

55 (2) "Extended family member" means a ~~is any~~ person who is:

56 (a) ~~(1)~~ A relative of a minor child within the third degree
57 by blood or marriage to the parent; or

58 (b) ~~(2)~~ The stepparent of a minor child if the stepparent is

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59 currently married to the parent of the child and is not a party
60 in a pending dissolution, separate maintenance, domestic
61 violence, or other civil or criminal proceeding in any court of
62 competent jurisdiction involving one or both of the child's
63 parents as an adverse party.

64 Section 3. Section 751.02, Florida Statutes, is amended to
65 read:

66 751.02 ~~Determination of~~ Temporary or concurrent custody
67 proceedings; jurisdiction.-

68 (1) The following individuals may bring proceedings in the
69 circuit court to determine the temporary or concurrent custody
70 of a minor child:

71 (a) ~~(1)~~ Any extended family member who has the signed,
72 notarized consent of the child's legal parents; or

73 (b) ~~(2)~~ Any extended family member who is caring full time
74 for the child in the role of a substitute parent and with whom
75 the child is presently living.

76 (2) In addition to the requirements of subsection (1), an
77 individual seeking concurrent custody must:

78 (a) Currently have physical custody of the child, and have
79 had physical custody of the child for at least 10 days in any
80 30-day period within the last 12 months; and

81 (b) Not have signed, written documentation from a parent
82 which is sufficient to enable the custodian to do all of the
83 things necessary to care for the child which are available to
84 custodians who have an order issued under s. 751.05.

85 Section 4. Section 751.03, Florida Statutes, is amended to
86 read:

87 751.03 Petition for temporary or concurrent custody;

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88 contents.—Each petition for temporary or concurrent custody of a
89 minor child must be verified by the petitioner, who must be an
90 extended family member, and must contain statements, to the best
91 of the petitioner's knowledge and belief, providing ~~showing~~:

92 (1) The name, date of birth, and current address of the
93 child.†

94 (2) The names and current addresses of the child's
95 parents.†

96 (3) The names and current addresses of the persons with
97 whom the child has lived during the past 5 years.†

98 (4) The places where the child has lived during the past 5
99 years.†

100 (5) Information concerning any custody proceeding in this
101 or any other state with respect to the child.†

102 (6) The residence and post office address of the
103 petitioner.†

104 (7) The petitioner's relationship to the child.†

105 (8) If concurrent custody is being requested:

106 (a) The time periods during the last 12 months that the
107 child resided with the petitioner;

108 (b) The type of document, if any, provided by the parent or
109 parents to enable the petitioner to act on behalf of the child;

110 (c) The services or actions that the petitioner is unable
111 to obtain or undertake without an order of custody; and

112 (d) Whether each parent has consented, in writing, to the
113 entry of an order of concurrent custody.

114
115 A copy of the written consent and any documents provided by the
116 parent to assist the petitioner in obtaining services must be

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117 attached to the petition.

118 (9)-(8) If temporary custody is being requested, the consent
119 of the child's parents, or the specific acts or omissions of the
120 parents which demonstrate that the parents have abused,
121 abandoned, or neglected the child as defined in chapter 39.~~†~~

122 (10)-(9) Any temporary or permanent orders for child
123 support, the court entering the order, and the case number.~~†~~

124 (11)-(10) Any temporary or permanent order for protection
125 entered on behalf of or against either parent, the petitioner,
126 or the child; the court entering the order; and the case
127 number.~~†~~

128 (12)-(11) That it is in the best interest of the child for
129 the petitioner to have custody of the child.~~† and~~

130 (13)-(12) A statement of the period of time the petitioner
131 is requesting temporary custody, including a statement of the
132 reasons supporting that request.

133

134 ~~Only an extended family member may file a petition under this~~
135 ~~chapter.~~

136 Section 5. Section 751.05, Florida Statutes, is amended to
137 read:

138 751.05 Order granting temporary or concurrent custody.-

139 (1) At the hearing on the petition for temporary or
140 concurrent custody, the court must hear the evidence concerning
141 a minor child's need for care by the petitioner, all other
142 matters required to be set forth in the petition, and the
143 objections or other testimony of the child's parents, if
144 present.

145 (2) Unless the minor child's parents object, the court

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146 shall award ~~the~~ temporary or concurrent custody of the child to
147 the petitioner if ~~when~~ it is in the best interest of the child
148 ~~to do so.~~

149 (3) If one of the minor child's parents objects to:

150 (a) The petition for concurrent custody, in writing, the
151 court may not grant the petition even if the other parent
152 consents, in writing, to the entry of the order. The court shall
153 give the petitioner the option of converting the petition to a
154 petition for temporary custody. If the petitioner so elects, the
155 court shall set the matter for further hearing, provide notice
156 to the parent or parents, and proceed pursuant to paragraph (b).
157 If the petition is not converted into a petition for temporary
158 custody, it shall be dismissed without prejudice.

159 (b) The petition for temporary custody ~~granting of~~
160 ~~temporary custody to the petitioner,~~ the court shall grant the
161 petition only upon a finding, by clear and convincing evidence,
162 that the child's parent or parents are unfit to provide for the
163 care and control of the child. In determining that a parent is
164 unfit, the court must find that the parent has abused,
165 abandoned, or neglected the child, as defined in chapter 39.

166 (4) The order granting:

167 (a) Concurrent custody of the minor child may not eliminate
168 or diminish the custodial rights of the child's parent or
169 parents. The order must expressly state that the grant of
170 custody does not affect the ability of the child's parent or
171 parents to obtain physical custody of the child at any time.

172 (b) Temporary custody of the minor child to the petitioner
173 may also grant visitation rights to the child's parent or
174 parents, if it is in the best interest of the child ~~to do so.~~

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175 (5)~~(a)~~ The order granting temporary or concurrent custody
176 of the minor child to the petitioner:

177 (a) May not include an order for the support of the child
178 unless the parent has received personal or substituted service
179 of process, the petition requests an order for the support of
180 the child, and there is evidence of the parent's ability to pay
181 the support ordered.

182 (b) ~~The order granting temporary custody~~ May redirect all
183 or part of an existing child support obligation to be paid to
184 the extended family member who is granted temporary or
185 concurrent custody of the child. If the court redirects an
186 existing child support obligation, the order granting temporary
187 or concurrent custody must include, if possible, the
188 determination of arrearages owed to the obligee and the person
189 awarded temporary or concurrent custody and must order payment
190 of the arrearages. The clerk of the circuit court in which the
191 ~~temporary custody~~ order is entered shall transmit a certified
192 copy thereof to the court originally entering the child support
193 order. The temporary or concurrent custody order shall be
194 recorded and filed in the original action in which child support
195 was determined and become a part thereof. A copy of the
196 temporary or concurrent custody order shall also be filed with
197 the depository that serves as the official recordkeeper for
198 support payments due under the support order. The depository
199 must ~~shall~~ maintain separate accounts and separate account
200 numbers for individual obligees.

201 (6) At any time, either or both of the child's parents may
202 petition the court to modify or terminate the order granting
203 temporary custody. The court shall terminate the order upon a

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204 finding that the parent is a fit parent, or by consent of the
205 parties. The court may modify an order granting temporary
206 custody if the parties consent or if modification is in the best
207 interest of the child.

208 (7) At any time, the petitioner, or either or both of the
209 child's parents, may move the court to modify the child support
210 provision or terminate the order granting concurrent custody.
211 The court shall terminate the order upon a finding that either
212 or both of the child's parents object to the order. The fact
213 that an order for concurrent custody has been terminated does
214 not preclude any person who is otherwise eligible to petition
215 for temporary custody from filing such petition. The court may
216 modify an order granting child support if the parties consent
217 and if modification is in the best interest of the child.

218 Section 6. This act shall take effect July 1, 2009.