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CS/CS/HB 25

2010 Legislature

1                   A bill to be entitled  
2           An act relating to temporary and concurrent custody of a  
3           child; amending s. 61.13002, F.S.; providing that a parent  
4           activated, deployed, or temporarily assigned to military  
5           service on orders in excess of a specified period may  
6           designate a person or persons to exercise time-sharing  
7           with the child on the parent's behalf; limiting who may be  
8           designated; providing for limited objections by the other  
9           parent; providing for expedited hearings; requiring a  
10          servicemember and a nonmilitary parent to cooperate with  
11          each other to resolve issues; requiring information  
12          sharing; providing for agreements for persons to exercise  
13          time-sharing on a parent's behalf; providing for expedited  
14          hearings to enforce time-sharing rights; revising ch. 751,  
15          F.S., relating to petitions and court orders awarding the  
16          temporary custody of a child to an extended family member,  
17          to also provide for concurrent custody with the parents of  
18          the child; amending s. 751.01, F.S.; conforming provisions  
19          to changes made by the act; amending s. 751.011, F.S.;  
20          revising definitions; defining the term "concurrent  
21          custody"; amending s. 751.02, F.S.; providing requirements  
22          for concurrent custody; amending s. 751.03, F.S.; revising  
23          the petition for concurrent custody to require additional  
24          information; amending s. 751.04, F.S.; conforming  
25          provisions to changes made by the act; amending s. 751.05,  
26          F.S.; providing that if a parent objects to a petition for  
27          concurrent custody, the court may not grant the petition  
28          and must give the petitioner the option of converting the

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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29 petition to one for temporary custody; providing for  
30 dismissal of the petition; providing that an order  
31 granting concurrent custody does not affect the ability of  
32 the parents to obtain the physical custody of the child at  
33 any time; providing for the court to terminate an order  
34 for concurrent custody if either or both parents object to  
35 the order; providing for filing for temporary custody if  
36 an order for concurrent custody has been terminated;  
37 providing for the court to modify an existing child  
38 support order; amending s. 49.011, F.S.; conforming  
39 provisions to changes made by the act; providing an  
40 effective date.

41

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

43

44 Section 1. Section 61.13002, Florida Statutes, is amended  
45 to read:

46 61.13002 Temporary time-sharing modification and child  
47 support modification due to military service.—

48 (1) If a supplemental petition or a motion for  
49 modification of time-sharing and parental responsibility is  
50 filed because a parent is activated, deployed, or temporarily  
51 assigned to military service and the parent's ability to comply  
52 with time-sharing is materially affected as a result, the court  
53 may not issue an order or modify or amend a previous judgment or  
54 order that changes time-sharing as it existed on the date the  
55 parent was activated, deployed, or temporarily assigned to  
56 military service, except that a court may enter a temporary

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57 | order to modify or amend time-sharing if there is clear and  
58 | convincing evidence that the temporary modification or amendment  
59 | is in the best interests of the child. When entering a temporary  
60 | order under this section, the court shall consider and provide  
61 | for, if feasible, contact between the military servicemember and  
62 | his or her child, including, but not limited to, electronic  
63 | communication by webcam, telephone, or other available means.  
64 | The court shall also permit liberal time-sharing during periods  
65 | of leave from military service, as it is in the child's best  
66 | interests to maintain the parent-child bond during the parent's  
67 | military service.

68 |       (2) If a parent is activated, deployed, or temporarily  
69 | assigned to military service on orders in excess of 90 days and  
70 | the parent's ability to comply with time-sharing is materially  
71 | affected as a result, the parent may designate a person or  
72 | persons to exercise time-sharing with the child on the parent's  
73 | behalf. The designation shall be limited to a family member, a  
74 | stepparent, or a relative of the child by marriage. The  
75 | designation shall be made in writing and provided to the other  
76 | parent at least 10 working days before the court-ordered period  
77 | of time-sharing commences. The other parent may only object to  
78 | the appointment of the designee on the basis that the designee's  
79 | time-sharing visitation is not in the best interests of the  
80 | child. When unable to reach agreement on the delegation, either  
81 | parent may request an expedited court hearing for a  
82 | determination on the designation.

83 |       (3) The servicemember and the nonmilitary parent shall  
84 | cooperate with each other in an effort to reach a mutually

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85 agreeable resolution of custody, visitation, delegation of  
86 visitation, and child support. Each party shall provide  
87 information to the other party in an effort to facilitate  
88 agreement on custody, visitation, delegation of visitation, and  
89 child support. Agreements on designation of persons to exercise  
90 time-sharing with the child on the parent's behalf may also be  
91 made at the time of dissolution of marriage or other child  
92 custody proceedings.

93 (4)-(2) If a temporary order is issued under this section,  
94 the court shall reinstate the time-sharing order previously in  
95 effect upon the servicemember parent's return from active  
96 military service, deployment, or temporary assignment.

97 (5) Upon motion of either parent for enforcement of rights  
98 under this section, the court shall, for good cause shown, hold  
99 an expedited hearing in custody and visitation matters  
100 instituted under this section, and shall permit the  
101 servicemember to testify by telephone, video teleconference,  
102 webcam, affidavit, or other means where the military duties of  
103 the servicemember parent have a material effect on the parent's  
104 ability, or anticipated ability, to appear in person at a  
105 regularly scheduled hearing.

106 (6)-(3) If a temporary order is entered under this section,  
107 the court may address the issue of support for the child by:

108 (a) Entering an order of temporary support from the  
109 servicemember to the other parent under s. 61.30;

110 (b) Requiring the servicemember to enroll the child as a  
111 military dependent with DEERs, TriCare, or other similar  
112 benefits available to military dependents as provided by the

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113 service member's branch of service and federal regulations; or

114 (c) Suspending, abating, or reducing the child support  
115 obligation of the nonservice member until the custody judgment  
116 or time-share order previously in effect is reinstated.

117 (7)~~(4)~~ This section does not apply to permanent change of  
118 station moves by military personnel, which shall be governed by  
119 s. 61.13001.

120 Section 2. Section 751.01, Florida Statutes, is amended to  
121 read:

122 751.01 Purpose of act.—The purposes of this chapter ~~ss.~~  
123 ~~751.01–751.05~~ are to:

124 (1) Recognize that many minor children in this state live  
125 with and are well cared for by members of their extended  
126 families. The parents of these children have often provided for  
127 their care by placing them temporarily with another family  
128 member who is better able to care for them. Because of the care  
129 being provided the children by their extended families, they are  
130 not dependent children.

131 (2) Provide for the welfare of a minor child who is living  
132 with extended family members. At present, such family members  
133 are unable to give complete care to the child in their custody  
134 because they lack a legal document that explains and defines  
135 their relationship to the child, and they are unable effectively  
136 to consent to the care of the child by third parties.

137 (3) Provide temporary or concurrent custody of a minor  
138 child to a family member having physical custody of the minor  
139 child to enable the custodian to:

140 (a) Consent to all necessary and reasonable medical and

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141 dental care for the child, including nonemergency surgery and  
142 psychiatric care.~~†~~

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

- 146 1. Medical, dental, and psychiatric records.~~†~~
- 147 2. Birth certificates and other records.~~†~~ ~~and~~
- 148 3. Educational records.~~†~~

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

152 (d) Do all other things necessary for the care of the  
153 child.

154 Section 3. Section 751.011, Florida Statutes, is amended  
155 to read:

156 751.011 Definitions.—As used in this chapter ~~ss. 751.01-~~  
157 ~~751.05~~, the term:

158 (1) "Concurrent custody" means that an eligible extended  
159 family member is awarded custodial rights to care for a child  
160 concurrently with the child's parent or parents.

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

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

164 (b) ~~(2)~~ The stepparent of a minor child if the stepparent  
165 is currently married to the parent of the child and is not a  
166 party in a pending dissolution, separate maintenance, domestic  
167 violence, or other civil or criminal proceeding in any court of  
168 competent jurisdiction involving one or both of the child's

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169 parents as an adverse party.

170 Section 4. Section 751.02, Florida Statutes, is amended to  
171 read:

172 751.02 ~~Determination of~~ Temporary or concurrent custody  
173 proceedings; jurisdiction.—

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

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

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

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

184 (a) Currently have physical custody of the child and have  
185 had physical custody of the child for at least 10 days in any  
186 30-day period within the last 12 months; and

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

191 Section 5. Section 751.03, Florida Statutes, is amended to  
192 read:

193 751.03 Petition for temporary or concurrent custody;  
194 contents.—Each petition for temporary or concurrent custody of a  
195 minor child must be verified by the petitioner, who must be an  
196 extended family member, and must contain statements, to the best

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197 of the petitioner's knowledge and belief, providing ~~showing~~:

198 (1) The name, date of birth, and current address of the

199 child.†

200 (2) The names and current addresses of the child's

201 parents.†

202 (3) The names and current addresses of the persons with

203 whom the child has lived during the past 5 years.†

204 (4) The places where the child has lived during the past 5

205 years.†

206 (5) Information concerning any custody proceeding in this

207 or any other state with respect to the child.†

208 (6) The residence and post office address of the

209 petitioner.†

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

211 (8) If concurrent custody is being requested:

212 (a) The time periods during the last 12 months that the

213 child resided with the petitioner;

214 (b) The type of document, if any, provided by the parent

215 or parents to enable the petitioner to act on behalf of the

216 child;

217 (c) The services or actions that the petitioner is unable

218 to obtain or undertake without an order of custody; and

219 (d) Whether each parent has consented in writing to the

220 entry of an order of concurrent custody.

221

222 A copy of the written consent and any documents provided by the

223 parent to assist the petitioner in obtaining services must be

224 attached to the petition.



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225           (9)~~(8)~~ If temporary custody is being requested, the  
 226 consent of the child's parents, or the specific acts or  
 227 omissions of the parents which demonstrate that the parents have  
 228 abused, abandoned, or neglected the child as defined in chapter  
 229 39.~~7~~

230           (10)~~(9)~~ Any temporary or permanent orders for child  
 231 support, the court entering the order, and the case number.~~7~~

232           (11)~~(10)~~ Any temporary or permanent order for protection  
 233 entered on behalf of or against either parent, the petitioner,  
 234 or the child; the court entering the order; and the case  
 235 number.~~7~~

236           (12)~~(11)~~ That it is in the best interest of the child for  
 237 the petitioner to have custody of the child.~~7~~ ~~and~~

238           (13)~~(12)~~ A statement of the period of time the petitioner  
 239 is requesting temporary custody, including a statement of the  
 240 reasons supporting that request.

241  
 242 ~~Only an extended family member may file a petition under this~~  
 243 ~~chapter.~~

244           Section 6. Section 751.04, Florida Statutes, is amended to  
 245 read:

246           751.04 Notice and opportunity to be heard.—Before a decree  
 247 is made under this chapter ~~ss. 751.01-751.05~~, reasonable notice  
 248 and opportunity to be heard must be given to the parents of the  
 249 minor child by service of process, either personal or  
 250 constructive.

251           Section 7. Section 751.05, Florida Statutes, is amended to  
 252 read:

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253 751.05 Order granting temporary or concurrent custody.—

254 (1) At the hearing on the petition for temporary or  
255 concurrent custody, the court must hear the evidence concerning  
256 a minor child's need for care by the petitioner, all other  
257 matters required to be set forth in the petition, and the  
258 objections or other testimony of the child's parents, if  
259 present.

260 (2) Unless the minor child's parents object, the court  
261 shall award ~~the~~ temporary or concurrent custody of the child to  
262 the petitioner if ~~when~~ it is in the best interest of the child  
263 ~~to do so~~.

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

265 (a) The petition for concurrent custody, in writing, the  
266 court may not grant the petition even if the other parent  
267 consents, in writing, to the entry of the order. The court shall  
268 give the petitioner the option of converting the petition to a  
269 petition for temporary custody. If the petitioner so elects, the  
270 court shall set the matter for further hearing, provide notice  
271 to the parent or parents, and proceed pursuant to paragraph (b).  
272 If the petition is not converted into a petition for temporary  
273 custody, it shall be dismissed without prejudice.

274 (b) The petition for temporary custody ~~granting of~~  
275 ~~temporary custody to the petitioner,~~ the court shall grant the  
276 petition only upon a finding, by clear and convincing evidence,  
277 that the child's parent or parents are unfit to provide for the  
278 care and control of the child. In determining that a parent is  
279 unfit, the court must find that the parent has abused,  
280 abandoned, or neglected the child, as defined in chapter 39.

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281           (4) The order granting:

282           (a) Concurrent custody of the minor child may not

283 eliminate or diminish the custodial rights of the child's parent

284 or parents. The order must expressly state that the grant of

285 custody does not affect the ability of the child's parent or

286 parents to obtain physical custody of the child at any time.

287           (b) Temporary custody of the minor child to the petitioner

288 may also grant visitation rights to the child's parent or

289 parents, if it is in the best interest of the child ~~to do so.~~

290           (5)~~(a)~~ The order granting temporary or concurrent custody

291 of the minor child to the petitioner:

292           (a) May not include an order for the support of the child

293 unless the parent has received personal or substituted service

294 of process, the petition requests an order for the support of

295 the child, and there is evidence of the parent's ability to pay

296 the support ordered.

297           **~~(b) The order granting temporary custody~~** May redirect all

298 or part of an existing child support obligation to be paid to

299 the extended family member who is granted temporary or

300 concurrent custody of the child. If the court redirects an

301 existing child support obligation, the order granting temporary

302 or concurrent custody must include, if possible, the

303 determination of arrearages owed to the obligee and the person

304 awarded temporary or concurrent custody and must order payment

305 of the arrearages. The clerk of the circuit court in which the

306 ~~temporary custody~~ order is entered shall transmit a certified

307 copy ~~thereof~~ to the court originally entering the child support

308 order. The temporary or concurrent custody order shall be

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309 recorded and filed in the original action in which child support  
310 was determined and become a part thereof. A copy of the  
311 temporary or concurrent custody order shall also be filed with  
312 the depository that serves as the official recordkeeper for  
313 support payments due under the support order. The depository  
314 must ~~shall~~ maintain separate accounts and separate account  
315 numbers for individual obligees.

316 (6) At any time, either or both of the child's parents may  
317 petition the court to modify or terminate the order granting  
318 temporary custody. The court shall terminate the order upon a  
319 finding that the parent is a fit parent, or by consent of the  
320 parties. The court may modify an order granting temporary  
321 custody if the parties consent or if modification is in the best  
322 interest of the child.

323 (7) At any time, the petitioner or either or both of the  
324 child's parents may move the court to terminate the order  
325 granting concurrent custody. The court shall terminate the order  
326 upon a finding that either or both of the child's parents object  
327 to the order. The fact that an order for concurrent custody has  
328 been terminated does not preclude any person who is otherwise  
329 eligible to petition for temporary custody from filing such  
330 petition.

331 (8) At any time, the petitioner or either or both of the  
332 child's parents may move the court to modify the existing child  
333 support order pursuant to chapter 61. The court may modify an  
334 existing order granting child support if the parties consent and  
335 if modification is in the best interest of the child. Any order

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336 modifying child support in a concurrent custody proceeding shall  
337 be copied and placed in the related family court files.

338 Section 8. Subsection (14) of section 49.011, Florida  
339 Statutes, is amended to read:

340 49.011 Service of process by publication; cases in which  
341 allowed.—Service of process by publication may be made in any  
342 court on any party identified in s. 49.021 in any action or  
343 proceeding:

344 (14) For temporary custody of a minor child, under chapter  
345 751 ~~ss. 751.01-751.05~~.

346 Section 9. This act shall take effect July 1, 2010.