

By the Committees on Criminal and Civil Justice Appropriations;
and Judiciary; and Senators Storms and Baker

604-04272-10

2010334c2

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 either or both parents object to the order;
23 providing for filing for temporary custody if an order
24 for concurrent custody has been terminated; providing
25 for the court to modify an existing child support
26 order; amending s. 61.13002, F.S.; authorizing a
27 servicemember parent ordered to active duty to
28 designate another to exercise that parent's time-
29 sharing responsibility for the child; providing for

604-04272-10

2010334c2

30 expedited hearings and alternative means for the
31 servicemember parent to testify; providing an
32 effective date.
33

34 Be It Enacted by the Legislature of the State of Florida:
35

36 Section 1. Subsection (3) of section 751.01, Florida
37 Statutes, is amended to read:

38 751.01 Purpose of act.—The purposes of ss. 751.01-751.05
39 are to:

40 (3) Provide temporary or concurrent custody of a minor
41 child to a family member having physical custody of the minor
42 child to enable the custodian to:

43 (a) Consent to all necessary and reasonable medical and
44 dental care for the child, including nonemergency surgery and
45 psychiatric care.~~;~~

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

- 49 1. Medical, dental, and psychiatric records;
- 50 2. Birth certificates and other records; and
- 51 3. Educational records;

52 (c) Enroll the child in school and grant or withhold
53 consent for a child to be tested or placed in special school
54 programs, including exceptional education.~~;~~ ~~and~~

55 (d) Do all other things necessary for the care of the
56 child.

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

604-04272-10

2010334c2

59 751.011 Definitions.—As used in this chapter ~~ss. 751.01-~~
60 ~~751.05~~, the term:

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

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

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

67 (b) ~~(2)~~ The stepparent of a minor child if the stepparent is
68 currently married to the parent of the child and is not a party
69 in a pending dissolution, separate maintenance, domestic
70 violence, or other civil or criminal proceeding in any court of
71 competent jurisdiction involving one or both of the child's
72 parents as an adverse party.

73 Section 3. Section 751.02, Florida Statutes, is amended to
74 read:

75 751.02 ~~Determination of Temporary or concurrent~~ custody
76 proceedings; jurisdiction.—

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

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

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

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

87 (a) Currently have physical custody of the child, and have

604-04272-10

2010334c2

88 had physical custody of the child for at least 10 days in any
89 30-day period within the last 12 months; and

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

94 Section 4. Section 751.03, Florida Statutes, is amended to
95 read:

96 751.03 Petition for temporary or concurrent custody;
97 contents.—Each petition for temporary or concurrent custody of a
98 minor child must be verified by the petitioner, who must be an
99 extended family member, and must contain statements, to the best
100 of the petitioner's knowledge and belief, providing ~~showing~~:

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

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

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

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

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

111 (6) The residence and post office address of the
112 petitioner.†

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

114 (8) If concurrent custody is being requested:

115 (a) The time periods during the last 12 months in which the
116 child resided with the petitioner;

604-04272-10

2010334c2

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

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

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

123
124 A copy of the written consent and any documents provided by the
125 parent to assist the petitioner in obtaining services must be
126 attached to the petition.

127 (9)(8) If temporary custody is being requested, the consent
128 of the child's parents, or the specific acts or omissions of the
129 parents which demonstrate that the parents have abused,
130 abandoned, or neglected the child as defined in chapter 39.

131 (10)(9) Any temporary or permanent orders for child
132 support, the court entering the order, and the case number.

133 (11)(10) Any temporary or permanent order for protection
134 entered on behalf of or against either parent, the petitioner,
135 or the child; the court entering the order; and the case
136 number.

137 (12)(11) That it is in the best interest of the child for
138 the petitioner to have custody of the child.

139 (13)(12) A statement of the period of time the petitioner
140 is requesting temporary custody, including a statement of the
141 reasons supporting that request.

142
143 ~~Only an extended family member may file a petition under this~~
144 ~~chapter.~~

145 Section 5. Section 751.05, Florida Statutes, is amended to

604-04272-10

2010334c2

146 read:

147 751.05 Order granting temporary or concurrent custody.—

148 (1) At the hearing on the petition for temporary or
149 concurrent custody, the court must hear the evidence concerning
150 a minor child's need for care by the petitioner, all other
151 matters required to be set forth in the petition, and the
152 objections or other testimony of the child's parents, if
153 present.

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

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

159 (a) The petition for concurrent custody, in writing, the
160 court may not grant the petition even if the other parent
161 consents, in writing, to the entry of the order. The court shall
162 give the petitioner the option of converting the petition to a
163 petition for temporary custody. If the petitioner so elects, the
164 court shall set the matter for further hearing, provide notice
165 to the parent or parents, and proceed in accordance with
166 paragraph (b). If the petition is not converted into a petition
167 for temporary custody, it shall be dismissed without prejudice.

168 (b) The petition for temporary custody ~~granting of~~
169 ~~temporary custody to the petitioner,~~ the court shall grant the
170 petition only upon a finding, by clear and convincing evidence,
171 that the child's parent or parents are unfit to provide for the
172 care and control of the child. In determining that a parent is
173 unfit, the court must find that the parent has abused,
174 abandoned, or neglected the child, as defined in chapter 39.

604-04272-10

2010334c2

175 (4) The order granting:

176 (a) Concurrent custody of the minor child may not eliminate
177 or diminish the custodial rights of the child's parent or
178 parents. The order must expressly state that the grant of
179 custody does not affect the ability of the child's parent or
180 parents to obtain physical custody of the child at any time.

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

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

186 (a) May not include an order for the support of the child
187 unless the parent has received personal or substituted service
188 of process, the petition requests an order for the support of
189 the child, and there is evidence of the parent's ability to pay
190 the support ordered.

191 ~~(b) The order granting temporary custody~~ May redirect all
192 or part of an existing child support obligation to be paid to
193 the extended family member who is granted temporary or
194 concurrent custody of the child. If the court redirects an
195 existing child support obligation, the order granting temporary
196 or concurrent custody must include, if possible, the
197 determination of arrearages owed to the obligee and the person
198 awarded temporary or concurrent custody and must order payment
199 of the arrearages. The clerk of the circuit court in which the
200 ~~temporary custody~~ order is entered shall transmit a certified
201 copy ~~thereof~~ to the court originally entering the child support
202 order. The temporary or concurrent custody order shall be
203 recorded and filed in the original action in which child support

604-04272-10

2010334c2

204 was determined and become a part thereof. A copy of the
205 temporary or concurrent custody order shall also be filed with
206 the depository that serves as the official recordkeeper for
207 support payments due under the support order. The depository
208 must ~~shall~~ maintain separate accounts and separate account
209 numbers for individual obligees.

210 (6) At any time, either or both of the child's parents may
211 petition the court to modify or terminate the order granting
212 temporary custody. The court shall terminate the order upon a
213 finding that the parent is a fit parent, or by consent of the
214 parties. The court may modify an order granting temporary
215 custody if the parties consent or if modification is in the best
216 interest of the child.

217 (7) At any time the petitioner, or either or both of the
218 child's parents, may move the court to terminate the order
219 granting concurrent custody. The court shall terminate the order
220 upon a finding that either or both of the child's parents object
221 to the order. The fact that an order for concurrent custody has
222 been terminated does not preclude any person who is otherwise
223 eligible to petition for temporary custody from filing such
224 petition.

225 (8) At any time the petitioner, or either or both of the
226 child's parents, may move the court to modify the existing child
227 support order pursuant to chapter 61. The court may modify an
228 existing order granting child support if the parties consent and
229 if modification is in the best interest of the child. Any order
230 modifying child support in a concurrent custody proceeding shall
231 be copied and placed in the related family court files.

232 Section 6. Section 61.13002, Florida Statutes, is amended

604-04272-10

2010334c2

233 to read:

234 61.13002 Temporary time-sharing modification and child
235 support modification due to military service.—

236 (1) If a supplemental petition or a motion for modification
237 of time-sharing and parental responsibility is filed because a
238 parent is activated, deployed, or temporarily assigned to
239 military service and the parent's ability to comply with time-
240 sharing is materially affected as a result, the court may not
241 issue an order or modify or amend a previous judgment or order
242 that changes time-sharing as it existed on the date the parent
243 was activated, deployed, or temporarily assigned to military
244 service, except that a court may enter a temporary order ~~to~~
245 ~~modify or amend time-sharing~~ if there is clear and convincing
246 evidence that a ~~the~~ temporary modification or amendment is in
247 the best interests of the child. When entering a temporary order
248 under this section, the court shall consider and ~~provide for~~, if
249 feasible, provide for contact between the ~~military~~ servicemember
250 and his or her child, including, but not limited to, electronic
251 communication by webcam, telephone, or other available means.
252 The court shall also permit liberal time-sharing during periods
253 of leave from military service, as it is in the child's best
254 interests to maintain the parent-child bond during the parent's
255 military service.

256 (2) If a parent is activated, deployed, or temporarily
257 assigned to military service on orders in excess of 90 days and
258 that parent's ability to comply with time-sharing is materially
259 affected as a result, that parent may designate other persons to
260 exercise the parent's time-sharing possession of the child on
261 the parent's behalf. Such designation is limited to a family

604-04272-10

2010334c2

262 member, or stepparent or other relative by marriage, of the
263 child. The designation must be in writing and provided to the
264 other parent at least 10 working days before the court-ordered
265 period of time-sharing commences. The other parent may object
266 only on the grounds that the designee's time-sharing visitation
267 is not in the best interests of the child. If unable to reach
268 agreement on the delegation, either parent may request an
269 expedited court hearing for a determination on the designation.

270 (3) The servicemember and the other parent shall cooperate
271 with each other in an effort to reach a mutually agreeable
272 resolution of custody, visitation, delegation of visitation, and
273 child support. Each parent shall provide information to the
274 other parent in order to facilitate agreement on custody,
275 visitation, delegation of visitation, and child support.
276 Agreements on the designation of persons to exercise time-
277 sharing possession of the child on the servicemember's behalf
278 may also be made at the time of dissolution of marriage or other
279 child custody proceedings.

280 (4) Upon motion of either parent for enforcement of rights
281 under this section, the court shall, for good cause shown, hold
282 an expedited hearing in custody and visitation matters
283 instituted under this section, and permit the servicemember to
284 testify by telephone, video teleconference, webcam, affidavit,
285 or other means if the military duties of the servicemember have
286 a material effect on that parent's ability, or anticipated
287 ability, to appear in person at a regularly scheduled hearing.

288 (5)~~(2)~~ If a temporary order is issued under this section,
289 the court shall reinstate the time-sharing order previously in
290 effect upon the servicemember parent's return from active

604-04272-10

2010334c2

291 military service, deployment, or temporary assignment.

292 (6)~~(3)~~ If a temporary order is entered under this section,
293 the court may address the issue of support for the child by:

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

296 (b) Requiring the servicemember to enroll the child as a
297 military dependent with DEERs, TriCare, or other similar
298 benefits available to military dependents as provided by the
299 service member's branch of service and federal regulations; or

300 (c) Suspending, abating, or reducing the child support
301 obligation of the other parent ~~nonservice member~~ until the
302 custody judgment or time-share order previously in effect is
303 reinstated.

304 (4) This section does not apply to permanent change of
305 station moves by military personnel, which is ~~shall be~~ governed
306 by s. 61.13001.

307 Section 7. This act shall take effect January 1, 2011.